SPECULATION AND GAMBLING

ERNEST D. MacDOUGALL

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by

ERNEST D. MacDOUGALL

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Dedicated
TO MY
DEVOTED WIFE
MURIEL

AUTHOR'S PREFACE

GAMBLING is wholly based on superstition. It is a practice ill adapted to an age of science. It had its early origin in the practice of divination and sorcery.

Here is one field of human activity which has not, as yet, been explored by scientific research. It is the dark jungle-land from whence there still issue untamed beasts of prey to make havoc among the citizens.

The folly of gambling is aptly portrayed in the following passage from Shakespeare's *Merchant of Venice* (II, 1, 32):

> If Hercules and Lichas play at dice
> Which is the better man, the greater throw
> May turn by fortune from the weaker hand;
> So is Alcides beaten by his page.

Times change, and conditions under which men live. With changed conditions come changed opinions and points of view. From the standpoint of early history, when gambling devices were of simple form, gambling was regarded as a "questionable amusement," or, at worst, as a sort of petty theft. From the viewpoint of today, gambling, which uses the complex forms of trade in addition to the simple devices of yore, must be regarded as the most dangerous and ominous phenomenon of modern times.

The time once was when men labored long and hard to wrest, by brute force, a bare subsistence from un-

harnessed forces of the wilds. Under such circumstances it was thought sinful to spend one's time in any pursuit that did not directly add to one's meager supply of food and clothing; and so it was. Dancing, theatre-going and card-playing were vigorously denounced as a waste of precious time; and so they were.

But all of that has changed. Today the great problem is not how to produce as much as possible of food and clothing and shelter within very narrow limits of time and strength, but, rather, how properly to distribute goods and how to occupy advantageously one's leisure time. Millions upon millions of employable persons are now permanently unemployed, and will be so in "normal" times. At times such as these, when, because of vast overproduction of wealth, under-consumption of goods, and a badly demoralized system of exchange, the whole nation is sunk in deepest depression, a very large part of the population suffers enforced idleness. Increased hours of leisure will be the lot even of those who, in the future, will be employed. The problem of how to occupy one's idle time presses heavily upon the people. It is folly, in such a situation, to scold men for idling their time. The question now is how men may find more and better amusements and avocations and other conserving ways of passing the time.

The problem of gambling, viewed with modern eyes, assumes an aspect undreamed of in a simpler age. To view gambling as a mere "questionable amusement" is absurd in the extreme. Gambling today, practiced in the forms of trade, has far-reaching, deeply significant

implications of an economic nature. Gambling has so thoroughly permeated the economic life of the nation that a great malady has threatened its very existence. It must have been this situation that President-elect Franklin D. Roosevelt had in mind when, in his inaugural Address, on March 4, 1933, he said:

> Yet our distress comes from no failure of substance. We are stricken by no plague of locusts. Compared with the perils which our forefathers conquered because they believed and were not afraid, we have still much to be thankful for. Nature still offers her bounty and human efforts have multiplied it. Plenty is at our doorstep, but a generous use of it languishes in the very sight of the supply. Primarily this is because rulers of the exchange of mankind's goods have failed, through their own stubborness and their own incompetence, have admitted their failure, and abdicated. Practices of the unscrupulous money changers stand indicted in the court of public opinion, rejected by the hearts and minds of men.
>
> * * * * * *
>
> Recognition of the falsity of material wealth as the standard of success goes hand in hand with the abandonment of the false belief that public office and high political position are to be valued only by the standards of pride of place and personal profit; and there must be an end to a conduct in banking and in business which too often has given to a sacred trust the likeness of callous and selfish wrongdoing. Small wonder that confidence languishes, for it thrives only on honesty, on honor, on the sacredness of obligations, on faithful protection, on unselfish performance; without them it can not live.

Gambling, especially in the forms of trade, is destructive of confidence, of honesty, of honor, without

which the nation cannot long survive. On the other hand, as is pointed out in the article on *Gambling,* appearing in *Hasting's Encyclopedia of Religion and Ethics,* "In an atmosphere of brotherhood no form of gambling could exist"—not because amusements are inimical to brotherhood, but because an atmosphere of brotherhood is incompatible with financial crookedness and corruption, which are the concomitant attendants of modern gambling.

The brotherhood of squirrels seems to have more sense than the brotherhood of men, as a former government official said:

> If we saw a squirrel starving to death in a knothole in his nut-filled hollow tree, we wouldn't believe it.
>
> And yet here are 125,000,000 people, granaries full, factories shut, but with millions of workers idle and hungry and shabby and afraid of the future and of everything and everybody about them, and money galore in banks and depositories. It just doesn't make sense.

On reading this book one will find considerable repetition. The repetitions are deliberately made for the purpose of overcoming deep-seated misconceptions on the subject of gambling that have become exceedingly prevalent, thanks to the persistent and effective propaganda of Wall Street and La Salle Street, whose point of view has permeated into every nook and corner of the land. The people seem to have come generally to believe that gambling is here to stay.

The courts have, during all the years, been the one agency of civilization that has consistently and repeatedly denounced and condemned gambling, in all its

forms, as a "gigantic evil and blighting curse." In order to combat the prevailing opinion of the people that "life is a gamble, everything is a gamble, the farmer gambles when he goes out to sow seed," it has seemed to the author to be necessary to make reference to the dictionaries, to the encyclopedias, and to the decisions of the courts. At the risk of having this book called "encyclopedic," we have quoted at length from dictionaries, encyclopedias and court decisions. At the risk of having this book called "repetitious," we have emphasized more than once the definitions that seemed to be indispensable to a clear understanding of the subject.

The fact that we have quoted and discussed several court decisions should dismay no one. The reader will find the discussions to be sufficiently lucid to be understood readily by the layman. The book has been written for the average reader, but it is sufficiently documented and authoritative to be of use in serious study of the subject of gambling in its many forms.

The title of the book, *Speculation and Gambling,* is the title of the second chapter. The title of the first chapter, *Gambling and Crime,* might have been used appropriately as the title of the book, for gambling is the greatest known breeder of crime, in circles high and low. This book is not so much a discussion of speculation as it is of gambling. The most serious forms of gambling are related to, but distinct from, "speculation," accurately defined. It has been thought advisable, therefore, in connection with the study of gambling in the forms of trade, to consider briefly and incidentally,

for the purpose of definition, the subject also of speculation. Hence the title of this book.

In the chapters that follow we shall attempt to show (1) what is the line of demarcation between what is and what is not gambling, (2) the connection between gambling and crime, (3) the ruinous effects, in particular, of stock and commodity gambling, and (4) that the only effective means of combatting the gambling evil is through the formation of a strong, enlightened public opinion.

There is little literature on this subject. Many men have been intimidated from making exposures of the pernicious practices which we have described. Some men have been jailed. Others have been accorded less consideration than one would expect in a public trial.

ERNEST D. MACDOUGALL.

Webster Hotel,
Chicago, Illinois.
October 29, 1935.

TABLE OF CONTENTS

Author's Preface i

Introduction ix

I. Gambling and Crime 1

II. Speculation and Gambling 11

III. Some Forms of Gambling 23

IV. The Attitude of the Church Toward Gambling 34

V. Bucketshops and Brokers' Offices . . . 53

VI. Playing the "Futures" Market 59

VII. What the Courts Say 76

VIII. Hedging in the "Futures" Market . . . 92

IX. Selling Stocks Short 109

X. Wall Street and Washington, Inc. . . . 123

XI. This Paper Civilization 142

XII. Conclusions and Suggestions 159

Addendum: Excerpts from Letters from Deans of Theology 210

Glossary 244

Bibliography 250

INTRODUCTION

By Honorable Arthur Capper

United States Senator

I AM glad to know that Mr. MacDougall, a close student of legal and economic problems, has undertaken to write a book on *Speculation and Gambling,* giving due and timely emphasis to the problem of stock and commodity gambling in particular. I have read the manuscript with great interest and satisfaction. The treatment of the subject is at once stimulating and sound.

No subject concerns the public welfare more. Gambling in its more primitive forms is closely related to the rapidly growing problem of crime. Modern methods of gambling in the forms of trade, stock and commodity gambling, have inflicted untold injury upon the public, through "playing the market." We cannot afford to experience another stock market crash such as occurred in October, 1929, nor can we afford to continue longer without a free, fair, honest market for the products of the farm.

During many years of public service I have given most serious thought to the problem of the honest and efficient marketing of farm products. I have been much concerned about the enormous evils that result from market price manipulation and commodity gambling,

unfortunately so prevalent in our commodity exchanges and boards of trade.

These evils shall not be permitted to go unchecked. In 1922 the Capper Bill was enacted into law as the Grain Futures Act, limiting manipulative practices. In 1923 the Supreme Court of the United States, in the case of *Board of Trade v. Olsen,* 262 U. S. 1, held that Act to be constitutional and sustained the findings of the Congress to the effect that:

> . . . the transactions and prices of grain on such boards of trade are susceptible to speculation, manipulation, and control, and sudden or unreasonable fluctuations in the prices thereof frequently occur as a result of such speculation, manipulation, or control, which are detrimental to the producer or the consumer and the persons handling grain and products and by-products thereof in interstate commerce, and that such fluctuations in prices are an obstruction to and a burden upon interstate commerce in grain and the products and by-products thereof and render regulation imperative for the protection of such commerce and the national public interest therein.

And I have introduced into the recent Session of the Congress an amendatory Bill (S. 1334) which is calculated to strengthen the Grain Futures Act.

This is but a start in the right direction. No really effective step has yet been taken actually to limit, by Act of Congress, the destructive practice of gambling in farm products. Public sentiment must be aroused to support a movement in that direction. The enactment of laws, without the support of a strong, enlightened public sentiment, will not suffice.

Leaders of church and state, and leaders in every walk of life, should seriously concern themselves with the problems that are so ably discussed in this book.

ARTHUR CAPPER.

Washington, D. C.

With public sentiment nothing can fail.
Without it nothing can succeed.
Consequently, he who moulds public sentiment goes deeper than he who enacts statutes or pronounces decisions.
He makes statutes and decisions possible to be executed.

—Abraham Lincoln.

CHAPTER I

Gambling and Crime[1]

IN many jurisdictions gambling is a crime; gambling contracts are generally void and unenforceable. It should be remarked, however, that the sense in which the term is used in the Criminal Codes of the several States is not quite the same sense in which it is used colloquially by the average man on the street.

The problem of gambling, as also of crime in general, is exceedingly difficult of solution, but of very great importance in our modern, complex world. Several facts add to the difficulty. First, gambling, as also are other forms of crime for profit, is exceedingly prevalent in all strata of society; second, there is great confusion of thought as to what is and what is not gambling, every man being able, off-hand, without going to the bother of consulting a dictionary, to give a definition of the term that is satisfactory to himself; and, third, there is little literature on the subject.

There is a blood relationship, a close kinship, between gambling and other forms of crime for profit. Both are begotten of covetousness. This fact obviously appears in the field of high finance, where gambling and swindling are particularly rampant, as it does in lower, cruder strata of society. And it is undoubtedly true that the prevalence of gambling and mercenary

[1] It is suggested that the reader begin his reading with the Preface and Introduction.

crime in "respectable" circles of society lends encouragement, aid and comfort to gangsters and gunmen of gangland.

Gambling and crime run, hand in hand, in horizontal and practically parallel lines—lines which frequently coincide. That fact, by itself, would be distressing enough. Coupled with that fact, however, is the further fact that gambling and crime run also in perpendicular and practically parallel lines, cutting through all social strata.

The crooked politician is the key man in this interlacing network of gambling and crime. He occupies a central position in this web of woe, constructed by those who continually hope to get something for nothing. From the crooked politician there radiate lines of contact in all directions. Rather, we should say, *toward* crooked politicians there converge lines of contact from every lobbyist, corruptionist, grafter, gambler and racketeer in the country. The crooked politician "fronts" for the grafters and gamblers. For a price, he occupies the lime-light in the public eye and furnishes protection to those who, in security and secrecy, operate against the public. The business racketeer secretly joins forces with the gunman. And both are a power in politics. It is commonly reported that syndicates of gunmen have a fixed schedule of prices charged for dynamiting, for slugging, and for killing, and that their services are bought and paid for by those criminals of the "respectable" world who are too squeamish and too full of physical fear to commit violent crime in their own proper persons, but who

profit, nevertheless, from the violent crimes of others. So long as the gamblers and the grafters and the racketeers give to the crooked politician their financial and political support, the law seems to be impotent to protect the public. It is not law that is lacking; it is plain, simple, uncommon honesty that is wanting, not alone in the crooked politicians but chiefly in those who corrupt the politicians for special privilege and protection. *Politicians would not be corrupt if there were no one willing to corrupt them.*

Gambling and other forms of mercenary, predatory crime, as are most of the activities of our modern age, are highly organized. That is what gives gambling interests and organized crime the power and financial means to obtain protection from corrupt public officials. Yet organized gambling would have little of power or financial means without the support of the "respectable" customers and patrons. It is claimed by many that public gambling does more to fill the war chests of the gangsters than any other form of mercenary law breaking. It is generally understood that, at the trial of Al Capone, who was sentenced to the penitentiary on conviction of a charge of evasion of payment of Federal income tax, the evidence produced showed that the major part of his income was derived from the operation of gambling houses. The important thing to remember is that, in this day, gambling and crime for profit are, for the most part, highly organized, whether in the form of the "numbers" racket, stock swindling, stock gambling, or racketeering in other directions. And a further fact should also be

remembered. No form of organized crime or gambling can exist without the protection of corrupt, conniving public officials. The *individual* lawbreaker usually operates by stealth and without police protection, but the operations of *organized gangs* are known to the police.

It would be possible to give many concrete cases, stating names and dates, to illustrate how these criminal contact lines intertwine and converge, but it is not intended to give this discussion an unduly personal turn. Impersonally as possible, we shall give three illustrations.

A few years ago, in one of our large cities, a newspaper reporter, on his way to bet at the races, was shot down in cold blood. His pay as a reporter was small, but he lived lavishly, like a prince. He was intimate, on the one hand, with high police officials and, on the other hand, with the several gambling syndicates of the city. He knew all the professional gamblers and acted as contact man for the police. He not only patronized the local gambling houses, but he and certain high police officials played the stock market on a partnership basis. He was shot to death, it is said, because, after taking graft from the local gamblers, as the agent of the police, he was thought to have double crossed the gamblers.

In the same city a trusted employe of one of the largest banks, who had constant access to bonds belonging to customers, played the stock market over a period of years, consistently lost, and converted millions of dollars' worth of the customers' bonds to his own use to pay his gambling losses. His pastor said

that he was not a criminal, but a respectable church member and a fine citizen; nevertheless, he was convicted and sent to the penitentiary.

More recently, in one of our smaller cities where crime and gambling are extraordinarily rampant, an innocent man, mistaken for a "big shot" gambler, was shot to death in the small hours of the early morning as he was going about his legitimate daily duty. Public indignation and resentment against such shocking crime conditions instantly flared up. For a few months thereafter vigorous protests, voiced by prominent men, appeared in the public press demanding that *"numbers"* gambling be suppressed.

Finance, too, has been corrupted by stock-playing bankers and brokers. Few bankers or brokers have been convicted of stock or commodity gambling, but that is due to the ignorance and timidity of public prosecutors. Large numbers of them, however, have been convicted of other forms of mercenary crime.

Instances might be multiplied of greedy Cabinet officers, Governors, Judges and lawyers—ministers and administrators of justice—who have been convicted of crimes for profit and have been sentenced to the penitentiary; but these matters are of common knowledge in the minds of most people. Is the erring one who has been caught and convicted the exception to the rule? Sometimes we wonder. Is the convicted lawyer or the convicted politician the single, solitary black sheep that has strayed from the fold? The reader may draw his own conclusions from what he himself knows of the present state of our modern society.

It is true, and almost axiomatic to say, that crime and gambling go hand in hand, that where crime is there is gambling and, conversely, that where gambling is there is crime. At the 1930 Convention of the American Bar Association, before the Section of Criminal Law and Criminology, John Landesco made an interesting address on "Organized Crime and Gang Life in Cook County, Illinois." During the discussion that followed he was asked, "How many gangsters are gamblers?" His reply was, "One hundred per cent."

Gambling is the core of crime for profit. Gambling is the common concourse of criminals; the point of contact between the corrupt in every walk of life. The crooked judge may hesitate to accept an outright bribe of cash, but he will not hesitate to take gratuitous "winnings" at the poker table. The gambling-house is the most commonly used rendezvous of criminals of every sort. The recently elected Mayor of one of our large cities has found that fact to be the answer to the crime problem, and he has, as recently reported through the press, brought the crime situation in his city under control by breaking up the unholy alliance between professional gamblers and crooked politicians. The motive of the gambler, as of other mercenary criminals, is covetousness, avarice, cupidity and greed. Gambling and crooked politics are everywhere inseparable.

Some years ago a gentleman conversed thus with the president of a political reform organization:

G. I have been interested in following your worthy work, attempting to promote the nomination of good men on the tickets of both parties. I have wondered, though, whether you have any test which you apply to prospective nominees before giving them your endorsement.

P. Yes, we have a test. Our candidates are good church members, substantial citizens, men with goodly bank accounts.

G. Why is it, then, that these good men so often go wrong when elected to public office and turn out to be no better than those whom they succeeded?

P. That is hard to say. It is probably due to the corrupting influence of practical politics.

G. I have a test which I wish you would try. Call in your prospective office holders, one by one, and ask them this question: "Do you believe in gambling or are you, on principle, opposed to gambling in every form?"

P. No, I could not try that test. Most people gamble in one way or another. Many of our best people play the stock market. Well, anyway, you know that life is a gamble; everything is a gamble. No, we could not use any such test as that; that is too severe a test.

G. That is too bad. I had hoped that you would understand that you can not combat corrupt politics without striking at gambling. I had hoped that you would understand that a man who gambles is quite apt to have his palm open behind his back, but that a man who, on principle, is opposed to every form of gambling would not be so apt to go wrong.

In primitive times, before man dreamed of the law of cause and effect, uncivilized men attributed events to the work of good or evil spirits. This widespread, superstitious belief in luck was, and still is, a dominant motive in the lives of large numbers of men. In many

activities of human life, science has been utilized to eliminate or to minimize risk. The physician who gets a great thrill out of dealing in "wheat futures" would be horrified if someone should suggest that he toss a coin for the recovery of his patient. The mechanical engineer who delights in playing poker would resent the idea of trusting to luck to hold up the bridge which he is employed to build. The grocer who plays the ponies would hardly admit to his customer that the grocery bill is a gambling debt because, "you know, life is a gamble; everything is a gamble."

Men engaged in legitimate callings do not speak of their own vocations as consisting of gambling operations. Why is it, then, that gambling has so many proponents and apologists? Why is it that nine out of ten men will complacently say: "Life is a gamble; everything is a gamble; the farmer gambles when he goes out to sow seed?" Such bald falsity, such downright nonsense, is too prevalently talked for the safety of society. It is not true that life is a gamble. It is not true that everything is a gamble. It is not true that the farmer gambles when he goes out to sow. Why do civilized men talk like uneducated barbarians? The answer to that question is the answer to the crime problem. The fact of the matter is that we are not prepared to face the facts squarely. Gambling and crime have become so much intertwined and so deeply embedded in our modern society that some have questioned whether they can be eradicated without completely destroying the present social structure.

Even school children have, in increasingly large

numbers, emulated the gambling proclivities of their elders. And juvenile delinquency has grown apace with the growth of crime.

Men of predatory wealth have become gravely concerned whether we are not soon to witness a bloody revolution. Rather than to cease from their predatory practices they plan to take time by the forelock and, by force and violence, seize the Government and set up a fascist dictatorship. Rather than to use their clever intelligence in the public interest by promoting honesty and fair dealing and social justice, they seek to destroy whomsoever dares to point a way out of crime and lawlessness and concomitant exploitation of the public. Their only interest in the problem of crime is to meet violence with violence, giving no thought to right teaching and practical education as a cure for crime. Their sole interest in the problem seems to manifest itself in fear of physical violence to themselves. Their chief concern is to crush crimes of violence (which, of course, should be crushed), but they do not seem concerned with the serious problem of crimes of fraud, deceit, false pretense and breach of trust, which, by comparison, are far more numerous and of far greater significance to society.

Before the Attorney General's recent Crime Conference, at Washington, D. C., President Franklin D. Roosevelt gave the gist of the whole matter in one simple sentence: *"Crime is a symptom of social disorder."* While statesmen of the high type of President Roosevelt and his Attorney General are attempting to curb predatory, parasitic interests, in circles high

and low, the chief exploiters of the nation and their agents gang together to perpetuate their gigantic rackets in their entirety, unwilling to forego the benefits of their former privileges or to consider the common weal.

We shall turn now to a discussion of "speculation" and "gambling" in the hope that we may clearly define these terms, the loose use of which has led to much confusion of thought.

CHAPTER II

Speculation and Gambling

ON no subject having such far-reaching economic, social and ethical implications is there more confusion of thought and expression than on the subject of gambling. In no subject has there been less of serious study and research. In no subject of importance has there been produced so little of literature. It has seemed to have been taken for granted that the gambling instinct is an inherent part of human nature, that gambling has existed from time immemorial, and that gambling will always continue to exist. Education, science and religion are completely ignored.

However, it ought not to be considered that, because there has always been covetousness *among certain types of men,* there should never be made any attempt to teach the evil consequences of covetousness. The human nature of some men differs from the human nature of other men. Not all are gamblers—nor thieves and liars. Some men are; some are not. One may be conditioned against gambling as against stealing and lying, if adequate effort in that direction be made. It would be refreshing, indeed, to see someone write on gambling without beginning his work by saying, in effect, "Gambling is an ancient institution among men; there always has been gambling and there always will be gambling." Yes, and murder, too!

There are some men who seem to deplore the economic waste of gambling, when the stakes are high, but who apologetically concede that there is nothing unethical in gambling *per se*. It is a strange philosophy, indeed, that what is economically and socially unsound may, at the same time, be ethically right. However, the courts have repeatedly and vigorously denounced gambling, especially stock and commodity gambling, not only as illegal under the common law and contrary to public policy, but unethical and unsound economically and socially. It is impossible to conceive of a common law judge holding that practices which are unethical, uneconomic, anti-social and contrary to public policy are, at the same time, legal; and *vice versa*. Unsound practices cannot possibly be considered as either ethical or legal, though cloaked in sanctimony and garbed in the forms of law. Justice is concerned with substance, not with forms or shadows. Any court or any ethical cult that does not, by precept and practice, promote justice and sound judgment is not much of a court or much of an ethical cult. But our law is sound and our courts are sound on the subject of gambling.

Confusion of thought on this subject is manifest in confused expression. We hear it said that "life is a gamble; everything is a gamble." It is said that the farmer gambles when he sows seed. It is loosely said that one "gambles" in real estate and "speculates" on the fluctuation of the stock market. Such a statement is inaccurate. Both of these terms "speculation" and "gambling" have definite, mutually exclusive, meanings which may be found in any good dictionary.

The fact of the matter is that life is not a gamble, using the term in its proper sense. Everything is not a gamble. To what extreme absurdities such a doctrine would lead, if men really, in good faith, believed it to be true, and attempted to be governed by it in science, in business, and in other activities of human life!

Neither does the farmer gamble when he sows seed. To say that he does is to use the term in a highly improper sense, in total disregard of its true meaning. One speculates in real estate when he makes a risky *purchase;* but does he gamble in real estate? *Taking a chance* is not of itself gambling; other essential elements are also involved, as we shall soon see. One speculates on the stock market when he BUYS stock the price of which shows considerable fluctuation. One gambles on the stock market when he BETS on the fluctuations of price, but does not actually buy any stock. Gambling always involves *betting.* Speculation primarily involves *buying.* Merchandising and the buying of almost any kind of property, real or personal, often involves speculation, but gambling in stocks or commodities is an artificially superimposed excrescence on trading and is not a legitimate part thereof. It is not trading; it is betting about trading.

Certain characteristics of the exchanges, which have been developed to a high degree, make of them excellent instruments for gambling. Prices of listed stocks and commodities are *quoted* not only daily but momentarily, instantly, on sign of the slightest change. The volume of "trading" is enormous, thanks to the gamblers, and the *price fluctuations are reflected immedi-*

ately on the ticker-tape. For the purpose of stimulating gambling, as well as for swindling purposes, the prices are arbitrarily manipulated, up and down, by clever professionals. It is the sudden and frequent change in *quoted* prices that makes the stock and commodity exchanges so well suited for gambling, that is, for betting about price movements. The same is not true of the real estate market. Men have been known to *speculate* on the *rise* of market values of real estate and make risky purchases, but seldom, if ever, has one been known to BET about the *rise* or FALL of the market prices of real estate. It is in *organized* markets or exchanges where betting occurs. The fact is that the real estate market is not organized as is the stock exchange.

Many well meaning men have been heard to say: "I am opposed to both speculation and gambling; I am opposed to all 'unearned increment.' Why should I bother to distinguish between speculation and gambling?" The answer is that every educated man should be interested in accuracy of speech. Let us consult the dictionary. Webster's *New International Dictionary* defines the terms "invest" and "speculate" as follows:

> *Invest:* To lay out (money or capital) in business with the view of obtaining an income or profit; to convert into some form of wealth other than money, usually of a more or less permanent form and as a means of obtaining income or profit; as to invest money in bank stock.
>
> *Speculate:* To enter into a business transaction or venture from which the profits or returns are conjectural because the undertaking is out of the ordinary course of business; to purchase or sell with the expecta-

> tion of profiting by anticipated, but conjectural, fluctuations in price; often, in a somewhat depreciative sense, to engage in hazardous business transactions for the chance of an unusually large profit; as, to speculate in coffee, in sugar, or in bank stock.

There is one thing in common in investing and in speculating that is absent in gambling, that is, that in investing and speculating, there is *buying and selling,* while in gambling there is *only betting.* The element of risk is common to investing, speculating and gambling. In investing the risk is, presumably, small, while in speculating and in gambling the risk is usually large; larger, at least, than in investing. It should be noted that investment is made for income in the form of interest or profit, but speculation is not made for income. There is something of permanence implied in investment. Speculation is a risky *purchase* made for a large conjectural profit in the *increase of the selling price* on a quick re-sale, rather than for income arising from the thing purchased, and there is a correspondingly large risk of loss by reason of possible depreciation in selling price. Large risk is usually present both in speculation and in gambling, but these two are not to be distinguished by the risk element, for *the risk element is common to both.*

T. Henry Dewey speaks of gambling on price fluctuations of stocks or commodities as follows:

> The usual implements of gambling on prices are a blackboard, upon which are posted from time to time the market prices of stocks, cotton and other produce, slips of paper purporting to be orders to the keeper of the

> place to buy or sell for the account of the other party and other slips of paper purporting to be notices of purchases or sales made by the keeper of the place for the account of the other party. Each transaction is settled by the payment of the difference between the price of a pretended purchase and the price of pretended sale, it being agreed or understood that no delivery of the things pretended to have been bought and sold is ever to be made. A deposit is required by the keeper of the place which is called a margin, but is really security to him for the payment of the wager. If the market goes in his favor, he closes the transaction as soon as the fluctuation in price equals the amount of the deposit, which he then keeps; or it may be closed by the other party at any time before the loss to him equals the deposit. If the market goes in favor of the other party, the transaction is closed whenever he gives an order for that purpose, and then the keeper of the place pays to him the difference between the market prices of the pretended purchase and sale and returns the deposit.[1]

It should be noted that the margin which is required to be deposited is *not a partial payment of purchase price,* for no purchase is within the contemplation of the parties; *mere betting.* The margin is "security" to the broker *for the payment of the wager.*

The gambling transactions above described are supposed to have taken place in a bucketshop; but the same sort of transactions are extremely common in the stock and commodity exchanges today.

In this connection Mr. Dewey has this to say:

> That the proper distinction between speculation and gambling on prices should be observed, is of the greatest importance to stock brokers and commission merchants,

[1] T. Henry Dewey. *Gambling in the Forms of Trade,* p. 6.

especially those who are members of organized exchanges; because it is by and through them that modern speculation is almost exclusively carried on. A long experience, however, in matters connected with our prominent exchanges and a knowledge of their rules and customs have led me to the conclusion that they are much to blame for the hostile attitude of the public and the courts toward speculation. Most of the exchange members speak, act and testify in court, in regard to their future delivery business, as though they contemplated only differences in prices, and not buying and selling stocks and commodities; and several prominent exchanges have adopted rules, which lead their members to talk and act as though they contemplated differences in prices only; and most of the business done under those rules must be declared unlawful by the courts according to many of the statutes. The desire to facilitate the business of speculation has caused many of the exchanges to lose sight of the legal and moral questions involved. Their rules and the customs prevailing among the members have reduced actual delivery of the things dealt in to almost the vanishing point, so that, in the great majority of cases, it is impossible to see, or truthfully say, that trading is done in view, and with the expectation, of actual delivery. In a recent case, the court found that in about ninety-five per cent of the future delivery business done on one of our most prominent exchanges actual delivery was not intended; and, from my own observation, I think that ninety-nine per cent would generally be a more correct estimate. It is indeed difficult to make much of a practical distinction between a system of doing business on an exchange which reduces the chances of actual delivery to one in a hundred and an agreement in a "bucket-shop" that there shall be no delivery whatever; and, when an exchange loses sight of even that

distinction, as some of them do, it places itself in the category of "bucket-shops."[2]

Before taking up the matter of the definition of gambling, it should again be pointed out that investing and speculating involve buying, while gambling does not involve buying, but mere betting. It is not the purpose of this discussion to dwell upon the subject of speculation. Let the reader hold his own opinion upon that. The problem of *gambling,* exclusive of speculation, is of sufficient importance to demand our undivided attention in this book. Since we shall discuss the subject of gambling from a legal as well as from an ethical point of view, it would tend only to confusion if we should not distinguish sharply between "gambling" and "speculation."

To contend that there is no clear line of demarcation between what is gambling and what is not gambling is to rub out the distinction between what is legal and what is illegal in regard to the acquisition of property. Such an attitude of mind tends to obliterate one's sense of ethical and legal values touching property rights. The prevalence of such an attitude directly encourages the commission of crime for profit.

If one should have an argument with a friend as to what is and what is not murder, it would be strange, indeed, to see resort made to curb-stone gossip for the definition. We would expect intelligent men to consult the dictionary, the encyclopedia, or the law book for definitions of legal terms. Discussion is futile and

[2] *Ibid.*, pp. 9, 10.

puerile without the use of definitions. Let us again consult the dictionary.

Webster's *New International Dictionary* defines the verb *gamble* as follows:

> To play or game for money or other stake . . . ; to stake money or other thing of value upon an uncertain event; to hazard something upon a chance, to wager; as, to *gamble* in stocks or in wheat.

The fact that gamblers are disposed to scorn the dictionary should not deter us in our quest.

The New International Encyclopedia defines the noun thus:

> The art or practice of playing a game of hazard, or one depending partly on skill and partly on hazard, with a view to pecuniary gain.

The *Encyclopedia of the Social Sciences,* vol. VI, Title, *Gambling,* has this to say:

> The term gambling designates the deliberate wagering or staking of important or valuable considerations upon events which, so far as the parties to the wager can know, lie in the realm of pure chance, or luck, to use the more or less mystical conception of chance common among gamblers.

Glass, in his *Gambling and Religion,* defines *gambling* as:

> The mutual attempt of two or more persons to deprive one another of their money or goods without giving a fair equivalent.[3]

Charles, in *Gambling and Betting,* puts it this way:

[3] Rev. J. Glass. *Gambling and Religion,* p. 1.

> Gambling in its simplest form consists in an appeal to chance by two individuals, or groups of individuals; the first end of such an appeal is to give expression to man's inherent love of the game; the second is to transfer a certain amount of property from one individual or group of individuals to another by means of such an appeal.[4]

Canon Green, of Manchester, England, says:

> I would therefore define a gamble as an agreement between two parties, whereby the transfer of something of value from one to the other is made dependent on an uncertain event, in such a way that the gain of one party is balanced by the loss of another.[5]

From these definitions it clearly appears that there are several essential elements in gambling. Let us make a list of them:

1. Two or more persons are involved;
2. There is an agreement between these persons;
3. The agreement involves a wager or a bet;
4. The wager or bet has to do with the transfer of the title to and possession of money or property;
5. Such transfer of money or property is made to depend, by the agreement, upon the happening of some uncertain, future event;
6. The transfer is made without legal consideration or value received.

It will readily be seen that the terms "gambling" and "chance" are not synonymous. Yet most persons, in discussing this subject, seem to believe that these two words are synonyms. One says that the farmer gambles

[4] R. H. Charles. *Gambling and Betting*, p. 23.
[5] Peter Green. *Betting and Gambling*, p. 17.

when he sows seed. What he means to say is that the farmer takes a chance of having a good harvest, a poor harvest, or no harvest at all. But the farmer is not gambling. A farmer cannot gamble with himself; nor can he bet with nature. Gambling is a contractual relationship. The farmer takes a risk, but he does not gamble in the true sense of the term.

It has often been said that one gambles when he crosses a street; he runs the risk of being hit by an automobile. That is making a very loose use of the term; it leads away from an understanding of the subject. If one should deliberately walk in front of a rapidly moving automobile, there would not be present even the element of risk; there would be only the certainty that he would be hit. If one should complacently close his eyes and walk through heavy traffic there would be a strong probability that he would be hit. Neither case affords a satisfactory basis for a wager. It is true that life is full of chances, but intelligent men constantly seek to eliminate or to minimize life's risks.

Mackenzie, in his *The Ethics of Gambling,* offers this illustration:

> The Alpine traveller undoubtedly faces risks. But he does not surrender to them. His steel-pointed stick, the rope which binds him to his guide, his very boots, are all witness to his determination not to take mere chances, but to conquer circumstances. He studies the weather, the various formations of rock and ice, the balancing of the body, and all other factors which help to fight the risk. If a careless man were to set out to scale a peak without guide, without instruments, without knowledge,

> determined to trust solely to chance, that would be gambling.[6]

The distinction which Doctor Mackenzie has made between the conduct of prudent men and the conduct of reckless men is a proper one to make, for the prudent man is not inclined to assume unnecessary risks. But Doctor Mackenzie falls, unfortunately, into the mistake, so commonly made, of failing to point out that even the reckless taking of chances falls short of gambling. This was obviously an unconscious lapse into the vernacular of the street, for, in his book, he has pointed out, in a score of passages, that gambling always involves an *agreement between two or more persons* touching the *transfer of money or property* upon the happening of an uncertain, future event.

From what we read in the books we may safely assume that a complete definition of gambling is as follows:

> Gambling is a betting or wagering, by agreement between two or more persons, whereby the money, property or other thing of value of one or more of the parties to the agreement becomes the property of the other party or parties to the agreement, without legal consideration, upon the happening of an uncertain, future event designated for that purpose.

With this definition of gambling clearly in mind, it should be possible to correct much of the loose talking and loose thinking on this most vital subject.

[6] W. Douglas Mackenzie. *The Ethics of Gambling*, p. 43.

CHAPTER III

Some Forms of Gambling

ALL forms of gambling have the same essential features: Two or more persons, by bet or wager, agree, without legal consideration or value received, to the transfer of money or property (the stake) from one party to the other party, upon the happening of an uncertain, future event. The future event may be a combination of future determined numbers, the falling of dice, the turn of a raffle or roulette wheel, the outcome of a card game or a horse race, the operation of a slot machine, the outcome of an election, the rise or fall of stock exchange or commodity exchange market prices, or any number of future events in the happening of which there is some element of uncertainty or chance.

Some have contended that gambling involves only that risk that is artificially created for that purpose. That is not the true test. The risk of the outcome of a card game may be artificially created for the purpose of gambling, but the result of an election is not a risk artificially created for the purpose of gambling thereon. The risk of the movement of the market prices of listed stocks may be, and at times is, artificially controlled, or modified, but it is not artificially created. Risk is an inherent part of all purchase and sale. Stock exchange gambling is not based upon *artificially created risk,* but

upon inherent risk. Yet the courts have held it to be gambling, nevertheless.

However, there *is* something artificially created to serve as the basis of gambling: that is, the *agreement* between the players—the bet or the wager. Whether the risk be a natural risk or an artificially created risk is of no consequence as a test of what is or what is not gambling. The agreement (the bet or wager) is the test.

In any case, all forms of gambling are characterized by the same essential elements: Two or more persons involved; the bet or wager; the transfer of title to and possession of money or property; the risk; and the lack of legal consideration.

Gamblers bet with each other and stake their money or property on various types of risk. It is the difference in type of risk that distinguishes one gambling game from another. The name of these various gambles is legion. It may be well, however, to describe, by way of illustrating the subject, some of the more common types.

Betting at Poker. Poker is always accompanied by betting. As a mere game it has little point or purpose. But it does furnish plenty of risk upon which to bet. Poker is played by from two to six persons. We quote from *The New International Encyclopedia,* as follows:

> A full pack is used and five cards are dealt to each player, one at a time, after which, beginning at the dealer's left, each one may discard any or all of his cards, calling for as many new ones as he discards. This is the draw, and the player holding the most valuable hand is

the winner. . . . Before the play is opened counters are divided in equal value among the players. These counters usually are disks—called "chips"—of celluloid or some other composition, and of red, white, or blue color, to indicate their value. Before examining a hand each player deposits in the pool a value in counters previously agreed upon. This is the ante. After depositing the ante each player in succession after looking at his hand determines whether or not he will play. If he decides to play he is required to put up double the ante or as much more as he wishes up to the limit agreed on before the game begins. The player at his left has also the choice of staying out or depositing in the pool the same number of chips as the player who preceded him, in which case he is said to see him; or he may raise or go him better, in which case he deposits in the pool more than did his predecessor. The next or third player has also the choice of staying out or raising the preceding player, and so on with each in turn, one or more times around. Should all the players except one fall out, the one who remains takes the pool without showing his hand. Again, all the players in the game may see the one that raised last, in which case they are said to call the player's hand. Should none of the others have a better hand, they let the one who has been called take the pool without displaying their own hands, otherwise the higher hands are tabled and the winner takes the pool. It is sometimes agreed that the players who desire cards in the beginning of the game must add to their antes, and sometimes players make bets before they make their draw.

Webster's *New International Dictionary* gives the following:

Any of various card games in which, when one player has bet, those following must equal his bet (*see* or call him), increase his bet (*raise* him), or drop out of the game

for that hand (*pass*). In *draw poker,* the principal game, each player, after contributing his ante, may discard any of his cards and receive (*draw*) from the dealer an equal number. In *straight poker,* or bluff, each player in turn puts up the ante for the rest of the players. In *stud poker* all cards but the first round are dealt face up and the betting usually begins after the second round.

Betting at Bridge. This card game is very popular; auction bridge or contract bridge. At either of these games betting may or may not be engaged in, at the option of the players. If betting is not done, the playing of the game is not gambling. If betting is used, the player having the highest number of points at the end of the game takes the pot, to which all of the players, including the winner, contribute on the basis agreed upon before the playing begins.

Whether the game is played for money or for a prize is immaterial, *provided the prize is bought with the money bet by the players.* If the game is played for a "hostess prize" or for a "door prize," the playing does not constitute gambling, assuming that the hostess, not the players, pays for the prize. A "door prize" may constitute a lottery, if it is not, in fact, the gift of the hostess. At some bridge parties an admission price is charged and numbered tickets are sold, entitling the holder to participate in a drawing from the numbers. The lucky number wins the prize. This, however, has nothing to do with gambling on the card game. So it happens that, though there may be no gambling on the game, there may be gambling on the drawing of the lucky lot or number. That happens

when the chances on the lucky number are, in reality, sold rather than given *gratis* to the guests. Each such situation must be judged by its own peculiar facts and circumstances.

Roulette Betting. The New International Encyclopedia gives the following on roulette:

> A game of chance, usually associated with public gambling. The wager is as to which pocket out of a number in the circumference of a sunken circle on a table a small ivory ball will fall into. The pockets are numbered, and the numbers may be in any order and may run from 1 to 27, to 30, to 33, or to 36, besides which there are zero marks. The centre of the bed of the machine is set in motion by turning, with the forefinger, the cross which surmounts it, from right to left, causing a rotary motion. At the same instant a little ivory ball is thrown into the concavity of the wheel in a direction opposite to the motion. The ball gradually slows down and falls into one of the cavities. A few seconds before it stops the banker has the privilege of warning the spectators that it is too near its final selection for any more bets to be made. Though the principle of the game is eminently fair, experts can make a wheel which may be stopped at any point without detection from the player.

Betting on Horse-Races. Betting on horse-races is of two distinct types—the betting done by those who attend the race and the betting done by those who do not attend the race. The latter place their bets with "bookmakers" or "bookies," of whom we shall presently speak.

The New International Encyclopedia comments upon the attempts made in this country to control betting at horse-races, as follows:

> The Board of Control, made up of race-track and race-horse owners, was formed, and, under the Ives Pool Law (in New York), which permitted open betting, New York City became racing mad. Scandals became frequent, and under great agitation the Ives Law was repealed. . . . The Gray-Percy Racing Law was passed, and betting was made punishable by civil suit when carried on within a race track *and made a felony outside its gates.* A Stake Racing Commission was instituted (1895) and the tracks racing under the law were taxed 5 per cent of their receipts for the benefit of the agricultural fairs throughout the State. . . .
>
> The demoralizing effects of this wholesale public gambling, and the rank dishonesty of the methods under which much of the racing was conducted, finally aroused and crystallized intelligent public opinion against it in various parts of the country. In 1905 Illinois passed laws forbidding race-track betting, and this put a stop to racing in Chicago. In New York it received its death blow in 1908 from Gov. Charles E. Hughes, who, in spite of most powerful and unscrupulous opposition, forced the Legislature to pass acts declaring horse racing for stakes a public nuisance (with certain exceptions) and making pool selling, bookmaking, betting, etc., misdemeanors. This practically put an end to racing in New York.

Certain States have recently legalized betting on horse-races. There has, in fact, been quite a resurgence of horse-race gambling of recent years, due doubtless to the desire of an impoverished people to try to get something for nothing, and to the desire of the States to find new means of raising public revenues. Such betting is done by the *Pari-Mutuel System,* defined in Webster's *New International Dictionary* as follows:

> A form of betting on horses in which those who bet on the winning horse share the total stakes less a small per cent to the management.

The betting is computed by means of a machine called the "totalizator," defined in Webster's *New International Dictionary* as follows:

> A machine for registering and indicating the number and nature of bets made on horse races, used in the *pari-mutuel system* of betting, as in Australia and South Africa.

Damon Runyan, a noted sports writer, recently expressed his view of horse-race gambling as follows:

> In the now sacred name of revenue, such crime against public morals is being fostered in this country.
>
> The popular form is open gambling on horse and dog races. In most States the pari-mutuel system prevails. . . .
>
> You are a knocker and a killjoy if you raise your voice against gambling on the races, because, you are told, it is to produce revenue to the State. Nothing is said about the revenue that it will produce to the track owners.
>
> Yet there is no record of any State that has legalized gambling on the races reducing its taxes on that account. Proportionately to the amount of money wagered by the public, the return to the State is very small.
>
> It is a well known fact that the pari-mutuels will milk dry any ordinary community in which they operate for any length of time. The return to the State cannot possibly be commensurate to the distress created among business and working people by the gambling drain.
>
> But in these days you must not decry legalized vice, gambling or drinking or anything else. Think of the revenue it all produces, even if your income taxes do continue

to increase. However, I can offer you a tip on a sure thing in connection with this craze to legalize gambling.

The pendulum will swing back in a few years. Most of the states that are hastening to declare themselves in on the race track gambling will suddenly realize that they are getting the worst of the partnership, financially and morally.

Then you will find race tracks quoted at about a dime a dozen.

It is bad in principle, and worse in practice, to encourage gambling, and it can't last.

Betting with the Bookmakers. This form of betting on horse-races has less to commend it than betting by those who actually attend the races. It is said that those who *attend* the races do so primarily because of love of horses and of the excitement of witnessing a supreme contest between well-bred, highly trained race horses, and that the *betting* is purely incidental. That may or may not be true; probably not. Such is not the case, however, where "bookies" make their daily rounds among poor people not attending the races, and pick up bets wherever they can find them, on the streets, in the kitchens of the poor, in cigar stores, and in the shops.

We should make note at this point that Governor Henry Horner, of Illinois, is entitled to much credit for vetoing recently the proposed law to legalize bookmaking in Chicago. In so doing he has withstood the pressure of very powerful influences.

Perkins, in his *Betting Facts,* says:

> *The Street Bookmaker* carries on an entirely illegal business which is conducted for the most part by means of agents or touts in streets, yards or passages. The street bookmaker also carries on his business by means of agents amongst the employees in large industrial works.[1]

Slot Machines. Some slot machines are constructed so that they may be used as legitimate vending machines; some for gambling purposes; some for either purpose. It is not gambling to insert a coin into a slot machine that returns equal value in salted peanuts, gum, candy, cigarettes or similar articles. It is not gambling to insert a coin into a machine used for the exercise of skill in playing a mechanical game of golf, *provided that no prize is offered on the outcome of the game.* But those machines that are used to sell a chance on a prize are gambling machines.

Lotteries. Webster's *New Standard Dictionary* defines "lottery" as follows:

> A scheme for distributing prizes by chance or lot where a valuable consideration is given for the chance of drawing a prize, especially where such chances are allotted by sale of tickets.

Lotteries are, for the most part, prohibited in Great Britain and in the United States.

A *raffle* is a form of lottery in which, an *assumed value* of an article having been divided into shares or "chances," the article is disposed of among the shareholders by lot. The "assumed value" is divided into shares or chances. Where the assumed value is considerably in excess of the true market value of the

[1] E. Benson Perkins. *Betting Facts*, p. 51.

article the result obtained is swindling as well as gambling. Such excess assumed value closely resembles the "watering" of corporate stock, which is also a form of swindling.

Numbers Gambling. In *Encyclopedia of the Social Sciences,* Vol. VI, Title, *Gambling,* is the following account of the numbers game:

> In recent years there has developed in the United States a form of public gambling which in its illegality and complicated under-cover organization with thousands of agents and millions of participants, resembles the surreptitiously conducted race track gambling. There are several variations of the conditions of chance employed and the games have different names, such as policy games, numbers and pools. They are in fact lotteries which pay on number combinations taken from the published records of bank clearings, the United States Treasury balance, the total number of runs scored each day by various combinations of baseball teams and so forth. These lotteries are designed primarily, although not exclusively, for players of small incomes, and wagers as low as one cent are frequently accepted. In this way millions of dollars are wagered annually.

Dayton Stoddart, in a most significant series of articles on "Millions and Murders," in Raymond Moley's weekly magazine *Today,* describes vividly the concurrence of gambling and crime in several of the large American cities. In the issue of January 19, 1935, speaking of the numbers racket in Detroit, he says: "The popularity of the game is evidenced by the daily publication of racing bet totals by Detroit newspapers." In Washington, D. C., most of the newspa-

pers have agreed, in order to limit the operations of numbers racketeers, not to publish the racing bet totals. But other means of choosing winning numbers are not hard to find. In substantiation of our theme that gambling and crime go hand in hand, we commend to the reader this series of articles on "Millions and Murders," beginning in the December 8, 1934, issue of *Today*.

We have made some mention of stock and commodity gambling. We shall take occasion in subsequent chapters to develop this important aspect of the problem.

CHAPTER IV

The Attitude of the Church Toward Gambling

IT has been a difficult and perplexing matter to prepare a suitable chapter on the topic above set forth. The churches, for the most part, are presumably opposed to gambling in its various forms; in theory, at least. As to the doctrine of covetousness, in its relation to the problem of gambling, it is to be presumed that all religious bodies in the United States—Jewish, Catholic and Protestant—occupy common ground. Yet, while the churches have remained comparatively silent, gambling and the spirit of gambling have rapidly grown to amazing proportions throughout the land and have all but destroyed our modern civilization. What the explanation of this phenomenon may be we forbear to say. Others, more competent to speak upon the subject, have been invited to give the answer.

It is to be assumed that the true attitude of the church is best known to the responsible heads of Theological Seminaries, where the clergy are trained for duty. Hoping, therefore, to receive substantial aid in the matter of writing this chapter, we have addressed a letter to one hundred and fifty Deans of Theology in this country. The letter we wrote is as follows:

The Attitude of the Church Toward Gambling

Dr. ———, President,
——— Theological Seminary,
——— ———.

Dear Doctor ———:

I am writing a book on *Gambling and Crime*. In one of the chapters I took occasion to speak rather plainly about the apparent indifference of the church to the problem of gambling. Some of the ministers to whom I showed the manuscript thought that it would be more expedient for me to tone down the discussion so far as it relates to the duty of the church. I am sure that the church could be of great assistance in solving this problem if it felt that it lay within its province and was of sufficient importance from a spiritual point of view. I am perplexed to know just how to handle that particular chapter.

It has occurred to me that the most authoritative answer to my question as to the proper method of treating the matter of the church and the problem of gambling should come from the theological seminaries, where ministers are trained for duty. I assume that you have courses of study in ethics, social science and kindred pragmatic themes. Is it possible that there is not a sufficient supply of research material in the theological libraries on the subject of gambling, and that young ministers are not instructed in the matter for that reason? The court decisions on the subject are numerous and they clearly draw the line between what is and what is not gambling. The United States Supreme Court last year handed down a very able opinion on grain gambling, for example. Do the seminaries regard this matter as presenting a legal rather than an ethical problem?

I shall greatly appreciate it if you will frankly advise me in the premises, so that I may be able better to determine how this matter of the church and gambling should be treated. Please give me your suggestions as to the attitude of the church at large, as to the church in the more re-

stricted sense of your own affiliation, and as to your own attitude personally.

About sixty replies to the above letter have been received. It is encouraging to note the frankness with which some of those addressed have written. Excerpts from most of the replies may be found in the back of this book, as an Addendum, to which reference is hereby invited. The reader will make his own analysis of these replies and make his own deductions.

In printing these replies it has been thought best to present them anonymously, without further identification than that contained in the internal evidence. The replies came from representative spokesmen of Jewish, Catholic and Protestant bodies. It is fitting that such an important problem, considered from the ethical point of view, should receive an entirely non-sectarian treatment in this book. It would be interesting to consider, at some future time, whether it is reasonable to suppose that the geographical location of particular congregations, regardless of creed, may have had some effect upon the teaching activity or inactivity of the various churches in this respect; whether the attitude of the city churches might be expected to be somewhat different from that of the rural churches; and whether some congregations are less susceptible than others to the evil influence of Wall Street.

Aside from the matter of the actual, practical teaching of the several churches, in their present circumstances, it may be well to set down in this chapter the historic doctrine of the churches, so far as it can be ascertained.

In Ashton's *History of Gambling in England* there is a hint that "gambling meets with Divine approval." We quote:

> As far as we know, the ancient Jews did not gamble except by drawing or casting lots; and we find no word against it in the inspired writings, and, as even one of the apostles was chosen by lot (Acts 1:26), it must be assumed that this form of gambling meets with Divine approval.[1]

However, casting lots, in and of itself, is not gambling. Casting lots, without betting or wagering, falls short of gambling, in the true sense of the term. The twelve tribes of Israel cast lots to divide among themselves the land of the Canaanites (Num. 26:52-56). That was not gambling; that was merely a device for dividing the spoils of conquest. Another interesting illustration of casting lots was when Saul decreed that either he or his son Jonathan should die, lots being cast to determine the issue. The lot was cast and Jonathon was taken; but he did not die (I Sam. 14:36-45). Then, too, the raiment of Christ, at the crucifixion, was parted among the soldiers by the casting of lots (Matt. 27:35). That was not gambling; that was plain larceny.

Wholly aside from the fact that the principles laid down in the Bible are utterly inconsistent with the theory of gaming for money, it is said that there is one passage which expressly condemns gambling. It is, however, a condemnation of any resort to luck. Charles, in his *Gambling and Betting,* says:

[1] John Ashton. *History of Gambling in England,* p. 4.

> As regards the Jews, the only explicit denunciation of gambling in the Old Testament occurs in Isa. 65: 11 (revised version)—"preparing a table unto Luck and offering a full libation of mixed wine unto Fate."[2]

Disney, in his *A View of Ancient Laws Against Immorality and Profaneness,* writes:

> Though they had no written law for it, Gamesters were *excluded from the Magistracy,* incapable of being chosen into the greater or lesser Sanhedrim; nor could they be admitted as *witnesses* in any Court of Justice, till they were perfectly reformed." (Quoted from Ashton's *History of Gambling in England,* p. 5.)

That would be a most salutary rule today. The success of the New Deal depends, in large part, as our President has well said, in "driving the money changers out of the Temple." The courts must be purged of gambling, grafting judges, lawyers and witnesses: The church must overtly frown on gambling, if it hopes to establish the Kingdom of God on earth! Human society must, at last, be governed by those who detest this abominable vice and comprehend its appalling consequences!

In the *Jewish Encyclopedia,* Title, *Gambling,* we find the following:

> Among the ancient Israelites no mention is made of games of chance, and no provision was made against them until the period of the Mishnah. With the introduction of foreign customs and amusements in the latter period of the Second Temple, playing with dice ("kubya"), the popular game of antiquity, was adopted by the Jews. The

[2]R. H. Charles. *Gambling and Betting,* p. 6.

Rabbis were bitterly opposed to these imported fashions, and looked upon them with intense aversion. The Mishnah disqualified the gambler from testifying before a court of justice (Git. 61b; Maimonides, "Yad," Gezelah, VI, 7-11, 16; Shulhan 'Aruk, Hoshen Mishpat, 370).

* * * * * *

While the general tendency of the Rabbis was to forbid all manner of gambling games, they were careful to distinguish between those who played for pastime and those who made gambling their profession (Sanh. 24b).

Israel Abrahams, in his *Jewish Life in the Middle Ages,* has this to say:

Maimonides is sometimes quoted as an opponent of chess. But Maimonides only includes chess under the category of forbidden pastimes if it be played for money. The winning of money at any amusement was rigidly denounced by many authorities who had no objection to games of chance as such.

* * * * * *

Some even taught their children chess to wean them away from cards and other games of chance.

* * * * * *

Friendly as they were to chess, the Jewish moralists of all ages raised their protest in vain against games of chance. The ancient Israelites were ignorant of games or chance, and did not adopt *dice,* the most popular gambling game of antiquity, until the age of Herod. The Mishnah declared dicing infamous, and excluded players of the game from the right to give evidence in a court of justice. The money won at dice was dishonestly won, and the gambler was occupied in a pastime not calculated to serve the interests of society.[3]

[3] Israel Abrahams. *Jewish Life in the Middle Ages,* p. 389 et seq.

In *The Catholic Encyclopedia,* Vol. 6, Title, *Gambling,* we read as follows:

> Gambling, or gaming, is the staking of money or other thing of value on the issue of a game of chance. It thus belongs to the class of aleatory contracts in which the gain or loss of the parties depends on an uncertain event. It is not gambling, in the strict sense, if a bet is laid on the issue of a game of skill like billiards or football. The issue must depend on chance, as in dice, or partly on chance, partly on skill, as in whist. Moreover, in ordinary parlance, a person who plays for small stakes to give zest to the game is not said to gamble; gambling connotes playing for high stakes. In its moral aspect, although gambling usually has a bad meaning, yet we may apply to it what was said about betting (see Betting). On certain conditions, and apart from excess or scandal, it is not sinful to stake money on the issue of a game of chance any more than it is sinful to insure one's property against risk, or deal in futures on the produce market. . . . Theologians commonly require four conditions so that gaming may not be illicit. What is staked must belong to the gambler and must be at his free disposal. It is wrong, therefore, for the lawyer to stake the money of his client, or for anyone to gamble with what is necessary for the maintenance of his wife and children. The gambler must act freely, without unjust compulsion. There must be no fraud in the transaction, although the usual ruses of the game may be allowed. It is unlawful, accordingly, to mark the cards, but it is permissible to conceal carefully from an opponent the number of trump cards one holds. Finally, there must be some sort of equality between the parties to make the contract equitable; it would be unfair for a combination of two expert whist players to take the money of a couple of mere novices at the game. If any of these conditions be wanting, gambling becomes more or less wrong; and, be-

sides, there is generally an element of danger in it which is quite sufficient to account for the bad name which it has. . . .

* * * * * *

It is obvious that the moral aspect of the question is not essentially different if for a game of chance is substituted a horse-race, a football or cricket match, or the price of stock or produce at some future date. Although the issue in these cases seldom depends on chance, still the moral aspect of betting upon it is the same in so far as the issue is unknown or uncertain to the persons who make the contract. Time bargains, difference transactions, options, and other speculative dealings on the exchanges, which are so common nowadays, add to the malice of gambling special evils of their own. They lead to disturbance of the natural prices of commodities and securities, do grave injury to producers and consumers of those commodities, and are frequently attended by such unlawful methods of influencing prices as the dissemination of false reports, cornering, and the fierce contests of "bulls" and "bears," that is, of the dealers who wish respectively to raise or lower prices.

* * * * * *

From very early times gambling was forbidden by canon law. Two of the oldest (41, 42) among the so-called canons of the Apostles forbade games of chance under pain of excommunication to clergy and laity alike. The 79th canon of the Council of Elvira (306) decreed that one of the faithful who had been guilty of gambling might be, on amendment, restored to communion after the lapse of a year. A homily (the famous "De Aleatoribus") long ascribed to St. Cyprian, but by modern scholars variously attributed to Popes Victor I, Callistus I, and Melchiades, and which undoubtedly is a very early and interesting monument of Christian antiquity, is a vigorous denunciation of gambling. The Fourth Latern Council

(1215), by a decree subsequently inserted in the "Corpus Juris," forbade clerics to play or to be present at games of chance. Some authorities, such as Aubespine, have attempted to explain the severity of the ancient canons against gambling by supposing that idolatry was often connected with it in practice. The pieces that were played with were small-sized idols, or images of the gods, which were invoked by the players for good luck. However, as Benedict XIV remarks, this can hardly be true, as in that case the penalties would have been still more severe. Profane writers of antiquity are almost as severe in their condemnation of gambling as are the councils of the Christian Church. Tacitus and Ammianus Marcellinus tell us that by gambling men are led into fraud, cheating, lying, perjury, theft, and other enormities; while Peter of Blois says that dice is the mother of perjury, theft, and sacrilege. The old canonists and theologians remark that although the canons generally mention only dice by name, yet under this appellation must be understood all games of chance; and even those that require skill, if they are played for money.

* * * * * *

Modern ecclesiastical law is less exacting in this matter. The provincial Councils of Westminster are content with prescribing that clerics must abstain from unlawful games. The Plenary Synod of Maynooth, held in 1900, says that since not a little time is occasionally lost, and idleness is fostered by playing cards, the priest should be on his guard against such games, especially where money is staked, lest he incur the reproach of being a gambler. He is also exhorted to deter the laity by word and example from betting at horse-races, especially when the stakes are high. The Second Plenary Council of Baltimore made a distinction between games which may not suitably be indulged in by a cleric, even when played in private, and games like cards which may be played for the sake of inno-

cent recreation. It repeated the prohibition of the First Plenary Council of Baltimore that clerics are not to indulge in unlawful games, and only in moderation are to use those that are lawful, so as not to cause scandal. Nowadays, it is commonly held that positive ecclesiastical law only forbids games of chance, even to the clergy, when in themselves or for some extrinsic reason, such as loss of time or scandal, they are forbidden by the natural law.

His Eminence, Cardinal Hayes, kindly procured for us a comprehensive statement of the position of the Catholic Church, prepared at his request by Dr. William R. O'Connor, of St. Joseph's Seminary, Dunwoodie, Yonkers, New York. It is impracticable, because of its length, to reproduce that statement at this point, but it agrees substantially with what is printed above.

We have also received statements from Protestant bodies. In reply to our enquiry, Dr. Samuel McCrea Cavert, General Secretary of the Federal Council of the Churches of Christ in America, representing many Protestant denominations, writes as follows:

I am not able to give you information about the action of the separate denominations in regard to gambling. . . . I am glad, however, to quote to you the following action taken by the Executive Committee of the Federal Council of the Churches of Christ in America at its meeting held April 27, 1934:

"We reaffirm our vigorous opposition to gambling, which we regard as an insidious menace both to personal character and social morality. By encouraging the idea of getting something for nothing, of securing financial return without rendering any service, gambling tends to undermine basic ideals of honesty and public welfare. We are

therefore amazed and humiliated to learn that a bill has been introduced into Congress for a legalized national lottery as a means for raising public revenue. We voice our protest, in which we are confident we have the overwhelming support of many millions in our constituency, against any such proposal and authorize the officers of the Council to record our unalterable opposition thereto at any hearing on the subject."

The General Assembly of the Presbyterian Church in the United States of America has made pronouncements or "deliverances" against gambling in 1818, 1830, 1880, 1890 and 1935. In Part IV, Book of Discipline, of the *Presbyterian Digest,* 1930, we find the following:

Sec. 4a. *Card-playing and Games of Chance.*

. . . Our civil statutes and courts of law, for substance, define gambling to consist in playing at any game of chance for money, or anything else of value. That something of greater or less value is generally played for in this parlor style of card-playing is too well known to need any affirmation by this Committee. And civil courts have already decided it to be gambling. What a subject for thought and humiliation it is, and an evidence that evil can stealthily creep into the church, although the most glorious body on earth, that here is a practice indulged in by church members which, when brought into court, has been found to be under the ban of State law, which looks only to public policy. How then is the church fulfilling her mission as the light of the world? How can her people be the salt of the earth when the salt cannot be distinguished from the earth?

Sec. 5. *Gambling, lotteries, horse-racing, betting, etc.*

(a) These sins to be denounced and avoided.

The vice of gambling has also been forced upon our attention. We indeed hope that few, or perhaps none, of our actual professors have indulged themselves in the practice of what they consider as coming under the denunciation of gambling. But perhaps there are some addicted to this practice, and who are not unwilling to receive the word of admonition from us. Such we would earnestly exhort to consider in the most serious manner the consequences of the course they are pursuing, and the awful lessons which the experience of the world is every day exhibiting on this subject. But it is our duty further to testify that all encouragement of lotteries and purchasing of lottery tickets, all attendance on horse-racing and betting on such, or any other occasions, and all attempts of whatever kind to acquire gain without giving an equivalent, involve the gambling principle, and participate in the guilt which attaches to the vice.—1818, p. 690.

(b) Lotteries to be discountenanced.

. . . Resolved, 1. That, in the opinion of this General Assembly, all lotteries should be discountenanced by every professed member of the Presbyterian Church as immoral in their nature and ruinous in their effects upon individual character and the public welfare.

2. That the purchase and sale of lottery tickets should be avoided by every member of our church, even when the professed object of the lottery may be praiseworthy, inasmuch as it is not allowable to do evil that good may come.

3. That all the Presbyteries under the care of this General Assembly be, and they hereby are, recommended to take order on the subject of lottery gambling, to press the consideration of it and its attendant evils upon ministers and Sessions, and to adopt such plans of operation as may

free the church from all participation in this sin, enlighten, arouse and direct public opinion, and save our country from this and every other species of gambling.—1830, p. 306.

(c) Circulation of lottery schemes through the mails.

. . . Resolved, That the General Assembly renew the expression of the last Assembly of sympathy with the efforts to suppress the circulation, in the mails and otherwise, of publications of this character.—1880, p. 77.

(d) All games of chance discountenanced.

In view of the recent notorious attempts to force the lottery system upon some portions of our land by legislative enactments, the General Assembly does hereby reiterate in the most emphatic manner its condemnation of all lotteries as immoral in their nature and ruinous in their effects upon individual character and public welfare. The members of our church are exhorted to discountenance all forms of resorting to chance even for professedly praiseworthy objects; inasmuch as it is not allowable to do evil that good may come. The Presbyteries under our care are also recommended to press upon the consideration of ministers and Sessions the vicious influence of lotteries, and urge them to do what they can to arouse public conscience against this and every other species of gambling.—1890, p. 37.

At the General Assembly of the Presbyterian Church in the United States, held in May, 1935, at Cincinnati, Ohio, the following resolution, found on page 103, Part I, General Assembly Minutes, 1935, was adopted:

We look with deep concern upon the growing sentiment in favor of legalized gambling in all its forms, and the indifference of church people toward the ill effects of

gambling as a social practice. We hereby call upon the members of our churches to reappraise the social problem in the light of the Gospel of Christ.

At the Northern Baptist Convention, held at Rochester, New York, in May, 1934, the following resolution was adopted:

SECTION IV. MORALS—(A) Gambling.

Whereas, we believe gambling to be economically unsound, morally wrong, and devastating in its effect upon the moral fiber of the individual and nation; and

Whereas, in many states and in our national Congress, bills are pending that would legalize the raising of funds for governmental expenses and for charitable and educational and religious institutions through gambling methods, such as lotteries, race-track bookings, slot machines, etc.; therefore, be it

RESOLVED, That we disapprove without reservation the use of all such methods of chance in the raising of revenue for either state or private institutions; Be it further

RESOLVED, That we call upon our churches to aggressively and vigorously oppose these evils by precept and by example.

At the Southern Baptist Convention, held at Fort Worth, Texas, in May, 1934, the following resolution, found on page 112 of the Annual, was adopted:

3. Gambling—The Southern Baptist Convention hereby deplores the widespread revival of the gambling spirit in our American life and expresses its hearty and unqualified disapproval and censure of all forms of gambling and all games of chance. Hardly anything could be more demoralizing or destructive of all the regular commercial and industrial activities and prosperity of our people, or could more thoroughly debase their morality than a wide-

spread prevalence of gambling. We particularly condemn and protest against the proposal made in the Congress of the United States to set up a great nation-wide lottery.

At the last General Conference of the Methodist Episcopal Church, held at Atlantic City, in May, 1932, the following Committee Report was presented and adopted:

Gambling. A great menace to business integrity as well as to strong moral character is the widespread sin of gambling. It permeates all society. It is destructive of the interests of good government, breeds criminals, and is a burden upon legitimate business. It is directly responsible for broken fortunes and homes and defalcations and suicides. In none of its forms is it a greater danger to organized society than in the form of stock gambling, with the pyramiding of false values, which crush the innocent in their fall, and destroy true values without regard to the interests of the legitimate investor. Stock speculation in its various forms, short selling of securities and market pool manipulations disturb the confidence of the people and the business structure and constitute a serious injustice to legitimate industry, commerce, and finance, frequently depriving useful corporations and individuals of that access to credit which is essential to prosperity.

We believe that the government should, in so far as law and its administration will permit, secure the restrictions of credit to the purposes of sound business, denying it to the gambler. We call for the suppression of those places where gambling is tolerated, believing that in them crime and social difficulties originate and the integrity of the government is undermined. We ask that our Christian leaders direct the attention of our people, especially the young, to the difference between profits of honest toil and legitimate business with adequate return for services ren-

dered, and goods exchanged, and the securing of something for nothing by the devices of chance.

Substantially the same resolution was adopted at the last General Conference of the Methodist Episcopal Church, South, held at Jackson, Mississippi, in April and May, 1934, as reported in the Journal, pages 292, 293; and the following resolution was also added:

> *Lotteries and Race-Track Gambling.*—We deplore the widespread campaign to promote lotteries, whether such lotteries be promoted by private individuals for personal gain or by the government for revenue purposes, and we earnestly protest against the imposition of this iniquitous scheme upon our citizenship, and we call upon all good citizens and public officials vigorously to oppose this pernicious and growing evil.
>
> We call attention to the fact that many States have already legalized race-track gambling and that this action has created a condition which makes of this form of gambling a major menace to the financial and moral welfare of our people. We heartily condemn the licensing of parimutuel and any other forms of race-track gambling.

The Lutheran Church and the Reformed Church give catechetical instruction on the subject of gambling in connection with the study of the commandments, "Thou shalt not covet" and "Thou shalt not steal."

No statement of the position of religious bodies would be complete without making reference to the excellent article on *Gambling* which appears in Hastings' *Encyclopedia of Religion and Ethics.*

It may be appropriate at this point to call attention to the fact that in his address before the Federal

Council of the Churches of Christ in America, on December 6, 1933, President Franklin D. Roosevelt, among other things, said:

> If I were asked to state the great objective which church and state are both demanding for the sake of every man and woman and child in this country, I would say that that great objective is "a more abundant life."
>
> The early Christians challenged the pagan ethics of Greece and of Rome; we are wholly ready to challenge the pagan ethics that are represented in many phases of our boasted modern civilization. We have called on enlightened business judgment, on understanding labor and on intelligent agriculture to provide a more equitable balance of the abundant life between all elements of the community.
>
> We recognize the right of the individual to seek and to obtain his own fair wage, his own fair profit, in his own fair way—just so long as in the doing of it he shall not push down nor hold down his own neighbor. And at the same time, we are at one in calling for collective effort on broad lines of social planning — a collective effort which is wholly in accord with the social teachings of Christianity.
>
> * * * * * *
>
> From the bottom of my heart I believe that this beloved country of ours is entering upon a time of great gain. That gain can well include a greater material prosperity if we take care and that it is a prosperity for a hundred and twenty million human beings and not a prosperity for the top of the pyramid alone. It can be a prosperity socially controlled for the common good. It can be a prosperity built on spiritual and social values rather than on special privilege and special power.
>
> Toward that new definition of prosperity the churches and the government, while wholly separate in their func-

> tioning, can work hand in hand. Government can ask the churches to stress in their teaching the ideals of social justice, while at the same time government guarantees to the churches — Gentile and Jew — the right to worship God in their own way. The churches, while they remain wholly free from even the suggestion of interference in government, can at the same time teach their millions of followers that they have the right to demand of the government of their own choosing the maintenace of "a more abundant life." State and church are rightly united in a common aim. With the help of God, we are on the road toward it.

How can the churches, in this day of corporate finance, be of greatest service to society? Or shall the church seek selfishly to live apart? For more than one hundred years the business of the nation has been transacted through corporate forms. The corporation has presented problems that must be studied not alone in the law schools but also in the theological seminaries. It is not possible to study the ethics of today with the data of a pre-corporation or a handicraft age. To make ethical valuations today one must thoroughly understand the essential elements of corporate organization, of corporate finance, of corporate accounting, of the issuance and sale of corporate stock, of modern marketing of farm products, and so forth. It should no longer be thought that none but lawyers need understand these things. That fatal fallacy has made the people of the nation easy prey for unscrupulous gamblers and swindlers. A careful study of these things will slip the mask from the faces of financial

fakers and frauds. There is no good reason why an educated student of theology should not be able to read understandingly the decisions of the courts for their ethical values, and to work in closer co-operation with the government for the achievement of the more abundant life.

CHAPTER V

Bucketshops and Brokers' Offices

ONE of the most significant forms of gambling is that presented by the operations of the bucketshop. A bucketshop, according to *The New International Encyclopedia,* is:

> An establishment nominally conducted for dealings in stock, grain, or similar commodities, but in fact for the registration of wagers on the rise or fall of the prices of such articles. There is no actual transfer or delivery of the stock or commodity, which is *treated as having been bought or sold.* . . . In many bucketshops the operator withholds quotations favorable to the "speculator" and so deprives him of his meagre chances of winning.

It is worthy of note that gambling readily slips into swindling. Only the opportunity is needed for the gambler to become a swindler. How could it be otherwise when it is commonly believed that "life is a gamble; everything is a gamble"—when there seems to be in the mind of the average man no clear-cut distinction between honest acquisition of property and dishonest acquisition of property?

The same work also states:

> The bucketshop is generally recognized to be one of the most pernicious forms of gambling, and many efforts have been made to suppress it. In many States laws have been enacted prohibiting the operation of bucketshops, and

in some jurisdictions they have been held to be common gambling houses, to be dealt with as such by the police.

The word "bucketshop" has an odious origin. Hill, in his *Gold Bricks of Speculation,* gives the following account of the earliest use of the term:

> The term "bucketshops," as now applied in the United States, was first used in the late '70s, but it is very evident that it was coined in London as many as fifty years ago [written in 1903], when it had absolutely no reference to any species of speculation or gambling. It appears that beer swillers from the East Side [London] went from street to street with a bucket, draining every keg they came across and picking up cast-off cigar butts. Arriving at a den, they gathered for social amusement around a table and passed the bucket as a loving cup, each taking a "pull" as it came his way. In the interval there were smoking and rough jokes. The den soon came to be called a bucketshop. Later on the term was applied, both in England and the United States, as a by-word of reproach, to small places where grain and stock deals were counterfeited.[1]

The expression, "deals were counterfeited," touches the heart of the matter. It is a gambling in the *forms* of trade. Many profess not to know the difference between stock or grain gambling and the legitimate purchase and sale of stock or grain. There is no similarity between the two, except that the *forms* used are the same. The man who "plays the market" knows perfectly well whether he is betting on the rise or fall of the market price or whether he is making an honest, *bona fide* purchase or sale. It goes without saying that the *bona fide* purchase or sale of stocks or grains is not

[1] John Hill, Jr. *Gold Bricks of Speculation,* p. 39.

gambling. In the bucketshop there is no buying or selling of anything, the *forms* of transactions being *used and treated* as if something had been bought or sold. The transactions are counterfeit; they are fictitious transactions—mere bookkeeping, so far as purchase or sale are concerned.

But bucketshops are not the only places where gambling in stocks and grains and other commodities, listed on the exchange, is carried on. None but the most experienced eye can detect any difference in appearance between a bucketshop, "dealing" in stocks, and a stock broker's office. The chief difference, in fact, between a stock broker's office and a bucketshop is that in the former there is a certain amount of *bona fide* buying and selling of corporate stocks, while in the latter there is none. A large portion of the business conducted in stock brokers' offices consists in gambling, pure and simple. The transactions, either *bona fide* or fictitious, are arranged for in the broker's office. The forms of transactions, or the supposed transactions, are conducted on the floor of the exchange. This is true both in stock exchanges and in commodity exchanges. "Playing the market" is a most significant term, indicating the true nature of the transaction, the true intent of the parties. In these fictitious transactions there is no *bona fide* buying or selling done at all; merely betting on the rise or fall of market prices. The *forms* of buying and selling are scrupulously observed, but the real intention is not to buy, but to bet.

The terms used in Wall Street are confused and

confusing. In the stock exchange there are, in fact, three distinct types of transactions: (a) investing, (b) speculating and (c) gambling. Yet all transactions are said to consist of "buying" and "selling." Thus, it is made to appear that there is no gambling on the stock exchange; only buying or selling, not betting. Only the most unsophisticated would believe, in spite of this peculiar use of terms, that there are no gambling transactions on the exchange.

And the word "speculation" is used likewise in a very loose manner. There is a fundamental difference between speculating in stocks and gambling in stocks. Yet the term "speculation" is made to cover all transactions, aside from investments.

The distinction between investment and speculation is much more difficult to make than is the distinction between speculation and gambling. Risk is an element, as pointed out in Chapter II, common to all three, presumably least in investment. Risk in speculation may be greater than in gambling; but that is not the test. The point is that in both investment and speculation, properly speaking, there is actual purchase and sale, while in gambling there is only betting; no bona fide purchase and sale. The *form* of the gambling transaction may be the same as the form of the speculative transaction. In the one case, speculation, using the true meaning of the term, the parties to the transactions actually intend to buy and sell something, even though the risk involved be great. In the other case, gambling, it is the intention of the parties merely to bet on the

rise or fall of the market price. "Margin buying" is a convenient device of the gambler.

As to the difference between investment and speculation, our definitions indicate that one may invest in bank stock or he may speculate in bank stock. That depends chiefly upon the question how sound the bank is. Purchasing for use, with a minimum of risk, is investing; purchasing for re-sale, with great risk, is speculation. Investment is made for income; speculation is made for conjectural profits on re-sale. But gambling is not purchasing at all; it is mere betting for conjectural "winnings."

The stock and commodity exchanges and boards of trade are full of gambling. It is claimed, however, that there is no gambling done therein. The fact is that they are gilded sepulchers, outwardly beautiful, but full of dead men's bones within. The issue may be drawn clearly between the position of Wall Street and La Salle Street and the position of those opposed to stock and commodity gambling. The following propositions are put forth in behalf of the exchanges. It should be possible, by the exercise of a reasonable degree of industry and intelligence, to determine whether or not these things are true. For example, Joseph Stagg Lawrence, an ardent proponent of stock gambling, within reasonable limits, says, in effect: 1. There is no valid distinction that can be made between speculation and gambling; 2. There is no gambling in the stock exchanges; 3. Whether or not there is gambling in the exchanges, gambling is not wrong;

4. Gambling sometimes has economic, psychic and social advantages.

The practice of "selling" and "buying" corporate stock and commodities on the exchanges *for alleged future "delivery"* is a delusion and a snare and opens wide the gates for gambling. We have seen from our definitions that a valid distinction may be made between speculation and gambling. We shall presently see that the courts in this country have made this clear distinction and have consistently defined, detected and denounced stock and commodity gambling.

Ingenious sophists, nevertheless, have sought to make it appear that "buying" stocks or commodities "on margin" on the exchanges and boards of trade for future "delivery," is simply installment buying, not gambling. It should be borne in mind, however, that the sudden and frequent fluctuation of price quotations, instantaneously shown on the ticker-tape, and the large volume of "futures trading," falsely so called, render the exchanges and boards of trade particularly well adapted instruments for gambling, rather than for installment buying and selling. Unlisted stocks are often bought "over the counter" on the installment plan. Stocks listed on a stock exchange are seldom bought on the installment plan. "Margin buying" on exchanges is gambling in practically every case, as we shall presently see.

It should be noted that "playing the market" in a bucketshop is not so harmful as in a stock exchange or "futures" market because it has no effect on market quotations.

CHAPTER VI

Playing the "Futures" Market

IT IS sometimes said that those who "play the market" buy and sell stocks or commodities *for future delivery*. Let us see.

To all intents and purposes, there is no such thing in our exchanges and boards of trade as buying or selling stocks or commodities for future delivery. One who wishes to buy stocks on installment payments buys them "over the counter," not on the floor of the stock exchange. There is no real installment selling in the stock exchanges. One who wishes to sell actual stock on the floor of the exchange sells it outright. One who "sells short" does not "sell" for future delivery; he "sells" for immediate delivery. In fact, he does not sell at all. He merely pretends to sell. What he actually does is to *play* with the stock that some one else has "bought," or pretended to buy, "on margin." He plays the "bear" side of the game while the "margin buyer" plays the "bull" side of the game. Neither of them buys or sells anything at all. In fact, they do not even know each other, either personally or professionally; they know only their own respective brokers who manage the game for them. We shall elaborate this situation in subsequent chapters.

If one should wish to buy grain for future delivery, he would not buy a "grain futures contract," but

would ordinarily go into the "cash market"—not the "futures market"—and buy "cash" grain "to arrive" at a given date or thereabouts. The "cash market," as we shall presently see, is a merchandise market, where actual grain is bought, sold and delivered—delivered immediately or "to arrive." The grain futures market is a gambling market, where grain is neither bought, sold nor delivered, but where "grain futures contracts"—betting contracts, not grain—are bought and sold. Therefore, the term, "buying for future delivery," is a delusion and a snare, as we have already pointed out. None but gamblers "buy" or "sell" in the organized exchanges "for future delivery." They go through the form of buying and selling, but they distinctly understand that there shall be no delivery at all. "Puts and calls," "options" and "privileges" to deliver or not to deliver have been declared repeatedly by the courts to be mere gambling operations and illegal and void as such. It may be proper at this point to remark that gambling in the grain and farm produce exchanges is commonly called "gambling in the necessities of life."

We may illustrate the subject by taking commodity gambling and showing what the actual practice is in the matter of dealing in "grain futures." The same principles are involved in the matter of trading in "cotton futures" and in gambling on the rise or fall of prices of stocks listed on the exchange.

In the grain and commodity exchanges and boards of trade there are two distinct, though related, kinds of trading. There is, for example, trading in wheat

"futures" and there is trading in "cash" wheat, or corn or oats or cotton or other commodities. The term "cash" grain does not refer to the time of payment; it merely signifies that the trading is in actual grain—buying and selling actual merchandise for actual delivery. Trading in "futures" is, on the other hand, mere betting on the fluctuation of the "futures" market price quotations. The term "futures" refers to future *risks* of price changes, not to future deliveries. There are two sets of market price quotations—of "cash" wheat (merchandise) and of wheat "futures." The gambling is confined to the "futures" market. Unfortunately, a similar arrangement has not yet been made in the stock market. There gambling pervades everywhere.

The quoted prices of "cash" wheat are related to the quoted prices of wheat "futures" simply because, under the rules of the exchange or board of trade, the seller has the option to deliver or to "buy in" the open contract of the margin buyer. If he chooses to deliver, the buyer must accept delivery. The buyer has no such option. This option is seldom exercised in the "futures" market, and delivery is, in fact, seldom made or intended to be made. One difficulty about this rule is that there is no way of enforcing it, except on twelve business days in the year, when the "futures" market suspends operations. But parties may, if they wish, voluntarily make and take delivery of wheat even in the wheat "futures" market. The rule has just sufficient vitality to establish a relationship between the "cash" and the "futures" market in wheat or other grain or

listed commodity. Delivery in the "futures" market would be inconvenient and pointless. Delivery in the "futures" market is made ordinarily only when, through inadvertance, a broker neglects to "close out" a "futures contract" before the expiration of the designated time of "delivery," or when there is an unusual spread between "cash" and "futures" market prices, or when a "squeeze" is on. The "cash" contract is used for marketing or merchandising grain; the "futures" contract is used for plain and fancy gambling, that is, (1) for plain gambling by way of "speculation," as it is euphoniously called, and (2) for fancy gambling by way of hedging, which is a specialized form of so called "speculation."

We have already pointed out that the term "futures" does not imply future delivery. In ninety-nine cases out of one hundred, no delivery is made or intended to be made. When "cash" grain is bought for future delivery, it is a case of "to arrive" purchase. In fact, "cash" grain is the only grain that is ever delivered. Delivery under a "futures contract" automatically makes it a transaction in the "cash" market, not in the "futures" market.

In January, 1932, the United States Department of Agriculture published, as Circular No. 201, an excellent study of *Future Trading and the Cash-Grain Markets,* by Dr. G. Wright Hoffman, of the University of Pennsylvania. We shall, for convenience, refer to this circular (pamphlet) as Hoffman's *Future Trading.* On page 8 Dr. Hoffman says (referring to the

Chicago, Minneapolis, Kansas City and Duluth markets):

> All grains traded in are shown for each market; and for each grain the volume of trading, the volume of deliveries, and the ratio of deliveries to trading are shown. It will be seen at once that the proportion of deliveries is small. For wheat and corn the average is less than 1 per cent for the four markets combined, and for oats the proportion is less than 2 per cent. Flax futures show the highest ratio of deliveries, and to a corresponding extent the trading in this grain is of a merchandising character and not of a speculative or hedging character.
>
> The data on deliveries given in Table 3 include redeliveries. If redeliveries were excluded, the actual amount of grain involved would be still smaller in relation to the volume of futures transactions. An earlier study made by the Grain Futures Administration indicates that the figures in Table 3 on delivery of warehouse receipts probably are more than double the amount of actual grain involved.

The courts in this country have consistently defined stock and commodity gambling to be pretended purchases and sales, without intention to take or to make delivery of the thing supposed to be bought or sold. Neither Wall Street nor La Salle Street like this definition. This test of the "intent of the parties" with regard to delivery goes to the question of good faith, and that is never a pleasing topic to a stock or commodity gambler. Yet no better test of the validity of a contract has ever been discovered. Since contracts of purchase and sale are at all times involved in stock and commodity transactions, real or fictitious, there is no way in which this legal test can be evaded except by

fooling the courts as to the fact of the real intent of the parties to the transaction. When those who play the stock or commodity markets go through the form of making contracts for the purchase and sale of corporate stocks or of commodities, without any honest intention of actually buying or selling anything, but with the intention merely of betting on the rise or fall of quoted market prices and of settling the wager by paying the difference between the quoted market price and the price mentioned in the contract, they are undoubtedly "gambling under the forms of trade." That is just what they actually do in the "futures" market. And that is undeniably just what the "in and out" scalpers do when they get quickly into the market and get quickly out at the first quoted fluctuation of market prices, with no thought or need for any delivery.

It so happens that gambling brokers are beginning to see that prudence is the better part of valor, and they usually charge off to profit and loss the accounts of customers who welsh on their "futures" contracts. When they do go into court to collect an account they are usually beaten. This distasteful rule as to "intent of the parties" has been referred to derisively by Joseph Stagg Lawrence, of the Publicity Department of the New York Stock Exchange, as "one of the numerous sterile progeny of the law," as the reader will note on reading a subsequent chapter on *Wall Street and Washington, Inc.*

In an article in the April, 1931, issue of *Yale Law Journal,* on *Hedging and Wagering on Produce Exchanges,* Prof. Edwin W. Patterson, of Columbia Uni-

versity Law School, suggests a peculiar solution of the problem which this legal test of "intent of the parties" presents to stock and commodity gamblers. He says:

> *Case No. 4:* "Agreed that no actual delivery of wheat is to be made, but we will settle by payment in money of the difference between contract price and market price on the Chicago Board of Trade at the time when delivery is to be made." . . . Does not every promisor have the power to break his promise and pay the legally assessable damages, and what harm in allowing the parties to stipulate frankly that payment rather than performance shall be the consequences of the agreement?

To the unspoiled mind that must seem to be a shocking proposal. Professor Patterson had a mental reservation when he made it. Later in the article he points out that it is one thing for parties to enter, in good faith, into a contract for the sale and delivery of wheat and for one or other of the parties to fail to make delivery or to take delivery and to pay as damages for breach of contract the difference between the market price and the contract price, and that it is quite a different thing to contract, in the first place, that there shall be no delivery but shall be only betting on price differences. These two sorts of contracts are essentially different in character. One is legal and binding, and a breach will impose liability for payment of damages; but the other is a gambling contract, is unenforceable, and the defaulting party, if one may so speak in such connection, cannot be compelled to pay even the price differences which he has agreed to pay, much less damages or purchase price.

Here is another quaint way in which proponents of stock and commodity gambling seek to avoid the force of the decisions of the courts. In an article on *Trading in Commodity Futures,* in *Yale Law Journal,* November, 1933, commenting on the decision of the United States Supreme Court on this subject (in the *Dickson* case, to which we shall presently refer) Mr. Telford Taylor says:

> Possibly no rule of law has ever met such immediate and unanimous approval as did the "intent test." Common law courts without exception have always declared it to be the true and only criterion of the validity of futures contracts, and it has been written into the statute law of almost every state.

He then adds this surprising remark:

> The confusion and uncertainty which have resulted [in the minds of the brokers] have been largely due to the failure of the courts to recognize that futures contracts on exchanges imperatively demand the development of rules ancillary to the "intent test."

Who told Mr. Taylor that "futures contracts on exchanges imperatively demand" anything? That is just one of the many gratuitous assumptions upon which stock and commodity gamblers have sought to build up a case.

On page 35 of Hoffman's *Future Trading,* to which we have already referred, we find this statement:

> If the practice of trading in futures is to be justified upon economic grounds, it must be on the basis of its usefulness to the cash-grain markets. Two functions in particular are frequently emphasized: (1) The market-mak-

> ing function in which the futures market serves to enlarge trading interest and to direct the course of cash prices; and (2) the hedging function in which futures are used by cash interests as a means of minimizing the possibility of loss from adverse major movements in price.
>
> Whether these functions are of genuine service or not depends upon their effectiveness in actual operation. If futures prices maintain a close and continuing relationship to cash prices and at the same time reliably reflect fundamental trade conditions, there can be no question of the economic usefulness of future trading. The present study is not an attempt to answer these questions but only to throw some light upon them.

That is a very fair statement of the situation, if we are to consider the economic rather than the legal aspect of the question. We think we should consider both. We shall presently show that the attempt to "direct the course of cash prices" by trading in "futures" is a mischievous practice, and that the hedging function serves no legitimate purpose at all. There are, indeed, economic benefits derived from playing the "futures" market—benefits conferred upon the brokers and upon the hedgers, at a disproportionately excessive cost to the public.

There is another method by which professional stock and commodity gamblers seek to evade the law. There are several other such methods, but the one to which we now refer is the rule adopted by exchanges and boards of trade to the effect that every contract shall be deemed to contemplate delivery. The trouble with such a rule is that it is binding, if at all, only upon broker members of the exchange or board of trade,

not upon the customers who do the "trading." The brokers themselves evade their own rule by means of a "clearing house" whereby their "futures" transactions are set off against each other and cancelled, settlement being made not by delivery of grain but by payment of balances in price differences. So the rule of the exchanges amounts to little, even to the brokers in their own dealings among themselves. The adoption of this rule is a bold attempt to fool the courts, but the courts are not often fooled by it, as we shall presently see. What we are most concerned with is the contract between the gambling broker and his gambling customer who desires merely to "play the market" and whom the rules of the exchange do not affect. The exchanges do not tolerate bucketing in bucketshops—only in brokers' offices! In fact, they regard the bucketshops as their competitors and have sought to drive them out of business.[1] Meeker, the late economist of the New York Stock Exchange, says: "Dealings on the Exchange do not represent gambling but speculation."[2] If the decisions of our courts mean anything at all, this statement is not only misleading but is utterly false. It is an amazing but unquestioned fact that the vast majority of all reported decisions of the courts on the subject of gambling have to do with gambling operations conducted through the instrumentality of the stock and commodity exchanges; that is, stock exchange and commodity exchange gambling cases are more numerous in the reported deci-

[1] Arthur Newton Plummer. *The Great American Swindle, Inc.*, p. 22.
[2] J. Edward Meeker. *Short Selling*, p. 8.

sions of the courts than all other kinds of gambling cases combined! That is a fact that should sink down deeply into the consciousness of the American people. It should tend to counteract the false propaganda of Wall Street. The courts stand with face of flint against this sort of propaganda with which Wall Street has flooded the country. And yet we seem to be more impressed by the propaganda of Wall Street than by the well considered decisions of our courts! The obvious implication is that someone should familiarize the people with what the courts have said on this important subject, for the courts do not possess a publicity department suited to that use.

John T. Flynn, in his very excellent book on *Security Speculation,* has fallen into the common error on this point. He says:

> The Stock Exchange has expended great sums of money and immense energy in the effort to fix in the public mind the concept that speculation is not gambling. . . . Gambling debts are not enforceable. Moreover, the laws denounce penalties against premises which harbor games of chance in many States. If the laws in this country ever get to the point of making speculative [gambling] debts unenforceable . . . the fate of the institution would be sealed.[3]

It is a fact that the courts have, since the beginning, consistently held that stock and commodity gambling contracts are unenforceable and that such debts are uncollectible. It is pathetic that so few people who oppose stock and commodity gambling are aware of that fact. Not only so. The statutes in many States

[3] John T. Flynn. *Security Speculation,* p. 11.

provide that the loser may recover back from the broker his losses; in some cases, threefold. And the courts have upheld and enforced these statutes.

In most of the States there are statutes which outlaw bucketshops. Members of stock and commodity exchanges have always coveted the business which went to the bucketshops. Odium was sought to be placed by the broker members of "regularly constituted" exchanges upon the *institution* derisively called "bucketshop" rather than upon the gambling character of the *transactions* therein conducted. Consequently, in Tennessee, for example, the Bucketshop Act (Sec. 6836 a 1 et seq. of Ann. Code, 1918), was amended by Chapter 94, Public Laws, 1919, "to withdraw from the provisions of the gaming and wagering statutes of this State all transactions *executed upon and in accordance with the rules of a legitimate produce, stock or cotton exchange or Board of Trade,* and this Act shall be liberally construed at all times so as to effectuate this object, . . ." The obvious purpose of such an enactment was to attempt to give to "legitimate produce, stock or cotton exchange or Board of Trade" a monopoly in bucketing (gambling) operations. That was the plain intent, but the United States Supreme Court, in the recent *Dickson* case, to which we shall soon refer, has stripped the mask from this subterfuge. Gambling is gambling—contrary to public policy—*wherever* conducted, brokers and exchanges to the contrary notwithstanding.

Prior to the adoption of the said amendment of 1919, the Supreme Court of Tennessee, in a suit

of *McGrew v. City Produce Exchange,* 4 S.W. 38, brought to recover gambling losses from the brokers, said:

> The facts justify the finding that the incorporation was but a cloak used to cover the illegal acts contemplated in the organization, and done as a business; and in such case the form of the transaction is disregarded, and the interest and substance ascertained, and liability fixed for the thing done, without respect to the pretense under which it was attempted to be concealed. . . .

And we quote also from page 41, as follows:

> It was designed to suppress the evil of dealing in futures, and limit such operations to *bona fide* sales and purchases by those who wished to sell to those who wished to buy. In making the seller responsible for the intent of the buyer, and the buyer responsible for the intent of the seller, it intended to suppress gambling by confining the business of buying and selling for future delivery in such limits as would practically preclude the possibility of it. The *bona fide* dealer can still operate, but he cannot do so upon any terms which do not protect the communtiy against the pernicious and ruinous speculation [gambling] in the rise and fall of prices. He is obliged, for his own safety, as this act provides extreme penalties, to avoid the speculator [gambler], and buy only for the legitimate demands of necessity and trade.

At the same term, the court rendered a similar decision in the suit of *Dunn v. Bell,* 4 S.W. 41, brought by the wife to recover from the brokers her husband's gambling losses. The court quotes, with approval, the opinion of the referees, from which the following excerpt is taken:

> Mr. Justice Matthews, delivering the opinion of the court in *Irwin v. Williar,* 110 U. S. 499, 508, 4 Sup. Ct. Rep. 160, says: "The generally accepted doctrine in this country is, as stated by Mr. Benjamin, that a contract for the sale of goods to be delivered at a future day is valid, even though the seller has not the goods, nor any other means of getting them than to go into market and buy them; but such a contract is only valid when the parties really intend and agree that the goods are to be delivered by the seller, and the price to be paid by the buyer; and if, under the guise of such a contract, the real intent be merely to speculate [gamble] in the rise or fall of prices, and the goods are not to be delivered, but one party is to pay to the other the difference between the contract price and the market price of the goods at the date fixed for excuting the contract, then the whole transaction constitutes nothing more than a wager, and is null and void."

Nine years later, in 1896, the Court of Chancery Appeals of Tennessee, in the case of *Mechanics' Sav. Bank & Trust Co. v. Duncan,* 36 S.W. 887, held that the stock brokers, whom the cashier of the complainant bank had employed to act for him in certain New York Stock Exchange transactions, could not be compelled, because of the gambling nature of the transactions, to pay certain notes they had given for the purpose of settling their account with the bank's cashier. That is, the *stock brokers* pleaded that their notes covered gambling transactions. The court said:

> That a stock speculation of this kind, where the party trading neither has nor expects to get and to pay for the actual stock, is merely gambling, and illegal, and contracts founded thereon void and unenforceable, is beyond dispute.

This was then and is now incontrovertibly the law. It is the well settled doctrine of the common law, backed up by distinct statutory enactments in most of the States. Not only so, but there is statutory enactment in most of the States which enables those who deal with brokers, in gambling transactions, to recover from the brokers all losses sustained in such transactions, for the benefit of the loser, his family or his creditors.

In 1914, the Supreme Court of Tennessee, in the case of *Coles v. E. C. & H. E. Morrow,* 162 S.W. 577, decided as follows:

> Where a customer dealt with a broker, who was a member of a Board of Trade, by purchasing grain on margin, without any purpose of receiving grain, and on the understanding that if the price should decline so as to consume the margin, the customer should put up an additional margin or the broker could close out the transaction and charge the customer with the difference between the price at which the supposed purchase was made and the subsequent sale at market price, the transaction was a gambling transaction, and the money received by the broker in the conduct of his business was recoverable by the customer.

The fact is that the courts have kept the stock and commodity exchanges busy trying to keep just one jump ahead of the law, so far as gambling transactions are concerned. One might suppose that the brokers, on hearing the courts so consistently and so often condemn stock and commodity gambling, would, as patriotic, law-abiding citizens, forever abandon gambling practices through the medium of the exchanges. Not so. On the contrary, they have employed high-priced lawyers

to invent new subterfuges to circumvent the law and they have employed high-priced publicity men to delude the people with the idea that stock and commodity exchanges do not permit gambling transactions to be conducted within their sacred precincts.

One of the devices invented by "clever" lawyers to enable "regularly constituted, legitimate stock and commodity exchanges" to continue the practice of conducting gambling transactions is the drafting and enactment of such legislation as was referred to above—the 1919 amendment to the Tennessee Bucketshop Act.

In 1922, subsequent to the enactment of the said 1919 amendment, the Supreme Court of Tennessee, in the case of *Shepard & Gluck v. Thomas,* 246 S.W. 836, held that the cotton deals in dispute did not constitute a gambling contract, there being *an intention to make and accept delivery.* The court said:

> Certain disputed questions of fact were submitted to the jury. When narrated, the answers to the various issues are: . . . The order given by Thomas to Shepard & Gluck to buy the July futures contract was given at Memphis, Tenn. Each of these orders was executed and carried out on the floor of the New Orleans Cotton Exchange at New Orleans, La. When Thomas gave his orders to buy and sell said cotton, he disclosed to Shepard & Gluck his intention to make actual delivery of the cotton sold and to accept actual delivery of the cotton bought. . . .
>
> * * * * * *
>
> And by our act of 1919 (chapter 94) an order to buy or sell commodities for future delivery, when executed by an agent or broker upon a legitimate exchange, shall

> be deemed the contract of the principal, and the agent or broker shall not be liable for money lost by such party on any such contract. . . .
>
> *The jury's verdict* [italics ours] brings this transaction squarely within the statute which makes the contract enforceable and denies liability against the broker.

What would have been the result, however, if the evidence had shown, and if the court or the jury had found the fact to be, that the parties, at the time of making the contract, did not intend that delivery of the cotton should be made or taken, but that settlement should be made between the parties on the basis of the difference between the contract price and the market price at the time of the closing of the transactions? Would the supposed purpose of the said 1919 amendment, to throw the cloak of sanctity around *all* transactions conducted on a legitimate exchange, have availed to negative the doctrine of the common law that such fictitious trading is contrary to public policy and that such contracts are void as wagering or gambling contracts? Such legislation has merely the effect of placing the burden of proving the gambling character of the contract on the person who alleges that it is a gambling contract—which has, in truth, always been the law.

The courts will soon take *judicial notice* of the fact that a "futures" market is a gambling market, without calling for proof.

In the next chapter we shall see how the United States Supreme Court and other courts have viewed such a situation.

CHAPTER VII

What the Courts Say

TO play the "futures" market is contrary to law in many States. Yet it is a prevalent practice. From the point of view of those who oppose gambling, the practice should be suppressed. From the point of view of those who approve gambling, or see no great harm in it, it should be legalized. To legalize gambling in any form would not change the inherent character or quality of the act, though it might afford an illuminating commentary upon the point of view of many of our people. The reader will, of course, permit us to express our own point of view, the view of the courts, whether he can agree with it or not.

One advocate of a change in the attitude of the courts toward dealing in "futures contracts" is Telford Taylor, former Assistant Solicitor of the United States Department of the Interior. In his article on *Trading in Commodity Futures,* in Yale Law Journal, November, 1933, to which we have already referred, Mr. Taylor expresses sharp dissent from the views announced by the United States Supreme Court in the *Dickson case,* which we shall presently discuss. He seems to feel that the court did not comprehend the subject matter under consideration and did not assume the proper attitude toward it. In his concluding paragraph he says:

> Far too many cases have already been decided by judges who did not present an intelligible analysis of the test of "intent to deliver." In the wide field of commercial dealings characterized as "speculative," certainty and predictability in applying the law are of prime importance. The [*Dickson v.*] *Uhlmann* case does not help to clear the air.

The fact of the matter is, however, that Mr. Taylor did not comprehend the position of the court; nor did he comprehend the significance and purpose of the Grain Futures Act of 1922, by reference to which the court was sought to be misled. He says:

> It is clear from the language, legislative history, and the subsequent judicial interpretation of the Grain Futures Act that its purpose was to enunciate the principle that dealings in grain futures on exchanges have become of immense public importance, and to provide a mechanism for the supervision of such dealings and for the prevention of abuses in trading practices.

The purpose of the Grain Futures Act was not "to enunciate the principle that dealings in grain futures on exchanges have become of immense public importance," in the sense which Mr. Taylor implies. The purpose is set forth in section three of the Act in the following words:

> Transactions in grain involving the sale thereof for future delivery as commonly conducted on boards of trade and known as "futures" are affected with a national public interest; that such transactions are carried on in large volume by the public generally and by persons engaged in the business of buying and selling grain and the products and by-products thereof in interstate commerce; . . . that the

> transactions and prices of grain on such boards of trade are susceptible to speculation, manipulation, and control, and sudden or unreasonable fluctuations in the prices thereof frequently occur as a result of such speculation, manipulation, or control, which are detrimental to the producer or the consumer and the persons handling grain and products and by-products thereof in interstate commerce, and that such fluctuations in prices are an obstruction to and a burden upon interstate commerce in grain and the products and by-products thereof and render regulation imperative for the protection of such commerce and the national public interest therein.

In passing this Act the Congress found, as a matter of fact, that "such fluctuations in prices are an obstruction to and a burden upon interstate commerce in grain and the products and by-products thereof and render regulation [of trading in futures] imperative for the protection of such commerce and the national public interest therein." And the United States Supreme Court, in the case of *Board of Trade v. Olsen,* 262 U. S. 1, 43 S. Ct. 470, 67L. Ed. 839, in a decision upholding this Act as constitutional, quoted this language as an authorative finding of fact. In the *Dickson* case, the United States Supreme Court expressly held, as we shall presently see, that the enactment of the Grain Futures Act did not operate to legalize trading in "futures." But Mr. Taylor argues that it did, or, rather, that it was intended to do so.

Senator Arthur Capper, the writer of the Introduction for this book, was the author of the Grain Futures Act of 1922. On reading the Introduction it is not possible to believe that Senator Capper intended that

the Grain Futures Act should legalize gambling in grain "futures."

The Grain Futures Act of 1922 was intended to regulate the *form* of "futures" transactions on grain "contract markets" and to require such markets, that is, authorized grain exchanges and boards of trade, to make periodical reports to the Government of all dealings in "futures." No attempt was made by the Act, either to legalize or directly to curb grain gambling. The Grain Futures Administration, set up by the Act, was intended to perform mainly the function of a fact finding body.

In reply to a letter which we recently sent to the Secretary of Agriculture, he wrote as follows:

> The Grain Futures Act, as you have indicated, does not purport to put a curb on grain gambling as such and is not in any sense an anti-gambling statute. It is in effect a licensing and regulatory act applying to boards of trade and exchanges where grain is traded in for future delivery. It has for its principal purposes:
>
> (1) To prevent manipulation of grain prices and the cornering of grain.
>
> (2) To prevent the dissemination of false and misleading crop and market information affecting prices of grain in interstate commerce.
>
> (3) To prohibit the exclusion of co-operative associations from representation on contract markets.
>
> (4) To give the Secretary of Agriculture power to require reports from and to examine the books and records of such markets and their members.

We now refer to the case of *Dickson v. Uhlmann Grain Co.,* 288 U. S. 188, 53 S. Ct. 362, 77 L. Ed.

695, 83 A.L.R. 492, decided by the United States Supreme Court in February, 1933, reversing the decision of the Circuit Court of Appeals, Eighth Circuit, reported in 56 Fed. Rep. (2d series) at page 525. Briefly, the facts were as follows: The plaintiff, Uhlmann Grain Company, "was engaged in the grain, grain elevator, and grain brokerage business, and was a member in good standing of the grain exchanges or boards of trade of Kansas City, Mo., Chicago, Ill., Minneapolis, Minn., and Winnipeg, Canada. Its business consisted in buying and selling cash grain for itself and for its customers, the operation of grain elevators, and acting as agent or broker for its customers in the purchase and sale of grain for future delivery. In the year 1924, when all of the transactions here in question were had, plaintiff maintained a principal office at Chicago, Ill., and a branch office at Kansas City, Mo. It also maintained a local office at Carrollton, Mo., which was in charge of one E. S. McDonough." The transactions here involved were initiated in the local office of the plaintiff at Carrollton. The remaining facts of importance are vividly set forth in the dissenting opinion of Judge Kenyon, of the Circuit Court of Appeals, whose view was later sustained by the said decision of the United States Supreme Court. The opinion of Judge Kenyon, reported on page 534 of 56 Fed. Rep. (2d series), a gem description of a typical bucketshop, is here quoted in full:

> It seems to me that the purported sales and purchases which appellant claims were carried on for the various appellees were nothing but fictitious operations and were

gambling transactions. The fact that they may be termed "dealings in grain futures" sanctioned by the Federal Grain Futures Act does not remove the odor of bucket-shop transactions surrounding them. Carrollton was a small town in Missouri at which plaintiff through an agent operated an office. This office was in the basement of the Florence Hotel. It consisted of a roll-top desk, some chairs where the prospective victims might rest, a black-board where they might study figures which they could not understand, a desk for telegraph instruments, a type-writer, and some other paraphernalia that added a touch of mystery to the situation. There was a private telegraph wire communicating with the Kansas City office of appel-lant. Here sat throughout the day some of the citizens of Carrollton and vicinity who expected to grow rich rapidly by gambling in the purchase and sale of imaginary com-modities. The testimony shows that the defendants dealt in over three million bushels of grain during the short time that plaintiff had its office at Carrollton. The evidence shows that there were some forty odd other customers. If they had been equally as desirous of buying grain and sell-ing the same as were the defendants, there would have been more bushels of grain purchased and sold than possibly could have been produced in the county in which Carroll-ton was located and adjacent counties thereto, and, if it had been delivered, these customers, consisting of an ice dealer, an employe in a printing office, some farmers, an insurance agent, a country merchant, a laundryman's wife, and an undertaker's employe, would have sought in vain for some place in which to store the products. Of course what they were doing was merely betting on the advance or fall in the price of grain with no intention of actually purchasing or selling any grain. I am so well satis-fied that the trial court was right in holding these transac-tions to be pure gambling transactions that I am unwilling to agree that they were legal. Therefore I feel compelled to dissent from the majority opinion.

Testimony in this case was originally taken before the Federal District Judge for the Western District of Missouri. The trial judge, before whom the testimony was taken, "found specifically, among other things, that the transactions were wagering contracts 'cloaked in the forms of law'; and that the company's transactions with or for the customers occurred wholly in Missouri."

The plaintiff company was suing for $3,714.06, being the balance alleged to be due from its customer Dickson on account stated. "Dickson denied the indebtedness and pleaded further in bar that the transactions out of which the indebtedness is alleged to have arisen were conducted wholly within the State of Missouri and were gambling, illegal under its laws."

From its defeat in the trial court the company appealed to the Circuit Court of Appeals, as above stated, "and contended, among other things, (1) That there was no substantial evidence to support the finding that the transactions were fictitious or gambling transactions and hence invalid under the law of Missouri; and (2) That the Grain Futures Act superseded all relevant State laws relating to the subject of dealings in futures on 'contract markets', and that the transactions in question, being valid under the Federal Act, were necessarily valid under the laws of Missouri." The Circuit Court of Appeals, one judge (Kenyon) dissenting, reversed the judgment of the District Court (the trial court). The United States Supreme Court then, in turn, reversed the decision of the Circuit Court of Appeals, thereby sustaining the findings of fact and

judgment of the District Court *and sustaining the position of Judge Kenyon,* which is above set forth in full.

It will thus be seen that the two important questions before the court were: (1) Did the plaintiff conduct bucketing or gambling transactions with Dickson? and (2) What effect, if any, did the enactment of the Grain Futures Act of 1922 have in the way of legalizing such bucketing or gambling transactions?

The United States Supreme Court said.

> The burden was on the defendants (Dickson and other customers) to establish the defense of illegality under the law of Missouri, *Crawford v. Spencer,* 92 Mo. 498, 506; 4 S.W. 713; and the evidence was ample to support the conclusion of the trial court that the defense had been sustained. The Missouri Bucketshop Law, Rev. Stat. (1929), §§4316-4323, defines transactions in grain declared to constitute gambling and makes it punishable either to enter into the prohibited transactions or to keep a place where they are entered into.

Speaking on the subject of the effect of the enactment of the Grain Futures Act of 1922, in such a situation, the United States Supreme Court said:

> The Grain Futures Act did not supersede any applicable provisions of the Missouri law making gambling in grain futures illegal. . . .
>
> The federal act declares that contracts for the future delivery of grain shall be unlawful unless the prescribed conditions are complied with. It does not provide that if these conditions have been complied with, the contracts, or the transactions out of which they arose, shall be valid. It does not purport to validate any dealings. Nor is there any basis for the contention that Congress occupied the field in

respect to contracts for future delivery; and that necessarily all state legislation in any way dealing with that subject is superseded. The purpose of the Grain Futures Act was to control the evils of manipulation of prices in grain. Such manipulation, Congress found, was effected through dealings in grain futures. See *Board of Trade v. Olsen,* 262 U.S. 1, 32. Many persons had advocated, as a remedy, that all future trading be abolished. Congress took a less extreme position. It set up a system of regulation and prohibited all future trading which did not comply with the regulations prescribed. But it evinced no intention to authorize all future trading if its regulations were complied with. Both the language of the act and its purpose are clear; and they indicate the contrary. The Missouri law is in no way inconsistent with the provision of the federal act. It does not purport to legalize transactions which the federal act has made illegal. It does not prescribe regulations for exchanges. Obviously, manipulation of prices will not be made easier, or the prevention of such manipulation be made more difficult, because the State has declared that certain dealings in futures are illegal and has forbidden the maintenance within its borders of places where they are carried on. Since there is nothing in the state law which is inconsistent with, or could conceivably interfere with the operation or enforcement of, the federal law, the statute of Missouri was not superseded. Compare *Savage v. Jones,* 225 U.S. 501, 533.

This is the last word on the subject from the highest court in the land. It will thus be seen that gambling is still gambling, though "cloaked in the forms of law"—whether conducted in bucketshops or in regularly constituted, legitimate contract markets or exchanges. The exchange may be legitimate and the bucketshop illegitimate, but a legitimate exchange may not be used to

disguise the illegitimate character of gambling transactions. That should be fairly obvious to anyone who is willing and able to see and to understand. Certainly the courts have repeated that statement, in effect, often enough to dispel all doubt upon the subject. And the proposition itself is so self-evident as to be regarded as almost axiomatic, commending itself to the good common sense of the average man. But there are none so blind as those who will not see—having eyes, they see not; having ears, they hear not—greedy for gold, having hearts hardened by the hope of ill-gotten gains and the reaping of unrighteous riches.

The case of *Riordon v. McCabe,* 173 N.E. 660, 83 A.L.R. 512 (Illinois), decided in 1930, was a suit by a grain broker to foreclose mortgages or trust deeds on certain farm lands which McCabe had given to cover balances alleged to be owing by him to the broker on account of transactions conducted on the Chicago Board of Trade. McCabe defended against the suit on the ground that the consideration for the giving of the mortgages arose out of gambling transactions. The Master in Chancery, who took the testimony, the trial court, the Illinois Appellate Court and the Supreme Court of Illinois all sustained that contention. The Supreme Court held that:

> All transactions in grain or other commodities where the understanding exists between the parties that no deliveries are to be actually made, but the purchases and sales are to be adjusted by the settlement of differences in prices, fall within the operation of a statute declaring void, as gambling transactions, all contracts giving an option to

sell or buy a commodity at a future time where it is, at the time of making such contract, intended by both parties thereto that the option, whenever exercised, or the contract resulting therefrom, shall be settled not by the receipt or delivery of such property, but by the payment only of differences in prices thereof.

The fact that purchases and sales of grain took place on a board of trade under board of trade rules providing for acceptance and delivery does not necessarily establish that they are not gambling transactions.

In determining the character of purchases or sales of a commodity for future delivery as gambling transactions, it is immaterial whether the real intention is formally expressed in words if the circumstances in evidence show such intention, . . .

In determining whether it was the intention of the parties to a sale and purchase of a commodity for future delivery that there should be no actual delivery, but merely a settlement on difference in prices, it is proper to consider the financial ability of the dealer to handle the volume of the commodity dealt in, his facilities for handling it, his use or lack of use for it, the knowledge of the broker or commission merchant as to such financial ability and facilities of his client, and the fact that profits and losses were adjusted by way of differences in the market price.

At one time farmer McCabe had outstanding with this broker orders to "buy" half a million bushels of wheat at $1.40 per bushel! Can any man in his right mind say that those were *bona fide* orders to buy wheat? No; they were bets; that is all!

The court, among other things, said:

As has been frequently said by the courts in this country, it is quite as easy to conduct gambling transactions

> under the rules of the board of trade as it is legitimate transactions, and the validity of the rules of the board or its integrity as a business agency is in no wise involved. . . .
>
> It is commonly recognized that one may use a transaction valid on its face for an illegal purpose. . . .
>
> There is no evidence that the board of trade keeps a place where pretended and unlawful buying and selling are permitted by it. This fact, however, does not and cannot prevent a violation of section 130 of the Criminal Code where the intent of the parties as to a given transaction falls within the statute. . . .
>
> * * * * * *
>
> These circumstances are very strong evidence that during this period not only McCabe, but plaintiffs in error, intended that there should be no deliveries received or made of the commodities bought or sold, and that therefore the transactions during that period, which made up at least a part, if not all, of the consideration for the trust deeds in question, arose out of violations of this act.

This is the last word on the subject from the highest court in the State of Illinois.

In Chapter VI, we took occasion to remark that stock and commodity exchange brokers, instead of conforming their business to the requirements of the law, as announced by a long line of court decisions denouncing stock and commodity gambling, have hired "clever" lawyers to invent devices to enable them to evade the law. One of these devices is the enactment, in certain States, of a law withdrawing, or attempting to withdraw, *all* stock and commodity transactions, if conducted on regularly constituted, legitimate exchanges or boards of trade, from the operation of the laws against gambling. Another such device is the enact-

ment by exchanges and boards of trade of "iron-clad" rules and regulations requiring that all member brokers shall make their transactions in contemplation of actual delivery of the stock or commodity bought and sold. It is worthy of note, however, that *customers* are not required to make written statements under oath as to their intention. We shall risk the wrath of crooked finance by suggesting the thought that it would go far in the direction of eliminating stock and commodity gambling if the legislatures of our several States should enact a law requiring everyone who gives to a broker an order to buy or to sell stocks or commodities, at the same time and in each and every such case, to make a statement in writing, *under oath,* that he, in good faith, intends to take or to make delivery of the stock or commodity so bought or sold by him, as the case may be. This suggestion is worth billions of dollars per annum to the American people, but it will mean a desperate fight with most powerful and sinister interests to accomplish such a noble and obviously honest purpose.

However, the courts are not easily deceived by the unsworn pretenses of intention to make and to take delivery of the things "bought" and "sold."

In the case of *Clark v. McNeill,* 25 Fed. (2d) 247, 249, (Ky.), the court said:

> . . . . While one of the defendants testified that it was the intention of defendants that actual delivery of the cotton under the contracts bought and sold for future delivery was to be made, and although the printed form of confirmation of orders sent plaintiff by defendants contained the statement that "all orders for the purchase and

sale of any commodity are received and executed with the distinct understanding that the actual delivery is contemplated, and that the party giving the orders so understands and agrees," as also that the transaction was "subject in all respects to the by-laws and rules of the exchange where executed," . . . it is noticeable that neither this witness nor any other seems to have said that in defendants' business any cotton was ever delivered to or by the customer. . . .

Jesse McNeill seems never to have signed and returned to defendants the forms of acknowledgment of confirmation referred to. His brother, who seems to have had a fair acquaintance with the course of business at the office of defendants' correspondent at Hickman, where the orders here in question were taken, testified that this office "was all the time trying to get people to give John F. Clark & Co. their business. They bought and sold cotton on future delivery and required a margin. . . . He (presumably Jesse McNeill) dealt with them, and in the course of business men and women came there to deal with John F. Clark & Co., and they were buying cotton on the margin; no cotton was delivered. Men, women, and children and babies dealt in cotton over there *and in all transactions that they had there was not actual delivery of any commodity.*"

In the case of *Alex Hyman & Co. v. Hay,* 277 Fed. 898 (Miss.), the court held that:

The fact that purchases and sales of cotton for future delivery were made on an exchange, by whose rules contracts where actual delivery is not intended are prohibited, is not conclusive that the transactions were within the rules, and where there is evidence tending to show that, though valid contracts in form, they were in fact mere wagers, the question is ordinarily one for the jury.

In the case of *Medlin Mill Co. v. Moffatt Commission Co.,* 218 Fed. 686 (Mo.), the court said:

> *Legitimate* operations on boards of trade, in accordance with the formalities prescribed and established by such bodies, are recognized; but the mere adoption of such formulae, even though operative *within such boards* to compel delivery, if demanded, will not protect a transaction which does not contemplate such delivery, even though clothed in the garb of regularity. The law looks beyond the form, and deals with the substance of things.

Dealing in grain "futures" involves "buying" and "selling." We put the words "buying" and "selling" in quotation marks to call attention to the fact of the unusual sense in which these words are used. In dealing in grain "futures" there is no buying or selling of grain, though grain is said to be "bought" or "sold." Actual buying and selling is confined, to all intents and purposes, to dealing in "cash" (merchandise) grain. One who "buys" a "futures *contract*" acquires merely the right to "sell" such "futures *contract,*" through his broker, to some unknown person. If he can "sell" for more than he "bought," he wins the difference in prices —not difference in prices of grain but difference in prices of "futures contracts." Obviously, as tested by the courts, this is gambling. The gambling contract is not with the "buyer," who is unknown to him, but with his broker. This has been decided in many cases. It was clearly stated in the *Dickson* case, from which Mr. Taylor so thoroughly dissents. The fact is, under the decisions of the courts, that the customer is not concerned with or bound by the contract his broker

makes with the broker of some other customer. In fact, the "buyer's" broker may actually be trading on his own account. Who knows? The customer does not know.

And when one "sells" a "futures contract" he does not sell grain. Through his broker he "sells" to some unknown person, not grain but his "futures contract." True, he has the "option" or "privilege" of making delivery of grain. This he seldom does unless he forgets to "close out" his contract before delivery time or unless there is a wide spread in his favor between the "futures contract" price and the price of "cash" grain. Thus his gambling contract he *may,* though he seldom does, *convert* into a legitimate sale of "cash" grain. But primarily it is a gambling contract.

It is generally conceded by lawyers that these dealings in "futures" are gambling transactions, euphoniously called "speculative contracts." The chief justification for such transactions, in face of the condemnation of the law, is said to be certain alleged economic advantages they afford. Thus, in certain quarters, hedging has come to be considered legitimate on economic rather than on legal grounds. Thus the supposed right to hedge is said to justify the existence of a "futures market."

CHAPTER VIII

Hedging in the "Futures" Market

THE fact of the matter is that the "futures market" existed as a "speculative market" before there was ever any thought of hedging by dealing in "futures contracts." In a speech delivered on April 24, 1935, before the graduate students in marketing of the School of Commerce, Northwestern University, Chicago, Mr. J. M. Mehl, Assistant Chief of the U. S. Grain Futures Administration, stated that futures trading was not invented in order to enable grain merchants to hedge their purchases against the hazards of price fluctuations; that "speculation came first [without the excuse of hedging] and hedging came last in the development of futures trading"; and that "hedging is an incident and a by-product of speculation."

Mr. Mehl further pointed out that in futures trading the small trader, the public at large, plays an important part; that on September 29, 1934, for example, something like 18,000 persons had a market interest in wheat or corn futures on the Chicago Board of Trade. He says (p. 8, mimeographed copy):

> Nearly two thousand of these were classified as farmers. The range in occupation ran the whole gamut of human activity. Bankers and bakers, cooks and clergymen, hog buyers and hostesses, jewelers and jail builders, plasterers

> and pugilists, seamen and scientists, waitresses and watchmakers, lawyers, doctors, and nurses,—all were represented. One gave his occupation as "clamdigger" and another said he just "fizzled around."

It was further pointed out by Mr. Mehl that it has been estimated by the Federal Trade Commission that the cost of futures trading on the Chicago Board of Trade is between 20 and 25 millions of dollars per annum. This does not take into account the money which changes hands through one group of "speculators" losing to other trade groups, nor does it take into account the commissions and taxes paid by the "speculators." If all of these items should be considered as properly chargeable to the cost of marketing the farmers' grain, which Mr. Mehl doubts, then the argument, he says, that the only excuse for futures trading is its hedging value would have to be abandoned.

As to the supposed price-fixing value of the futures market, Mr. Mehl uses the following language (p. 5):

> The price-weighing machinery of such highly speculative markets is extremely sensitive. A false or misleading statement, released at the psychological moment, can in a few minutes turn thousands of dollars into the pocket of some unscrupulous trader. At the same time, it may cause millions of dollars in loss to farmers and others affected by the resulting fictitious price movement. Large speculators, either with design or because they find themselves in an over-extended position in the market, may temporarily upset the whole price structure in their efforts to take profits or to avoid loss. It has been demonstrated that in the case of Chicago wheat futures, for example, specula-

tive lines, either long or short, in excess of 2,000,000 bushels, are a more or less constant threat to market stability. There have been speculative lines in excess of 10,000,000 bushels held by a single individual.

Again, we find this language as to questionable methods in use in the grain futures exchanges (p. 11):

It is rather difficult, of course, to discover and identify quickly all attempts to manipulate prices. For this reason, and because there is such great disparity between the size of the operations of a few large speculators and those of the rank and file of traders, the Grain Futures Administration has recommended that some provision be made for limiting the size of purely speculative lines. There is only a handful of speculators that ever trade in amounts of over 2,000,000 bushels. The vast majority keep under 100,000 bushels. Our observations have been that the trading of the few who get into the 2,000,000-bushel class, while not necessarily manipulative, is generally too erratic to give the market any stability. Frequently it seems to be based not so much upon a study of supply and demand conditions as upon what is termed the technical position of the market. In a word, they seem to be more interested in creating market psychology and in jockeying the general public out on "thin ice" than in studying fundamental conditions.

Other weaknesses have developed in the law [Grain Futures Act of 1922] also, such as our inability to deal with certain sharp practices in the handling of customers' orders. These involve cheating, through the bucketing of orders by means of cross trades, etc. We have felt that under the law it is our duty to bring these matters to public attention and have tried to do so in a constructive kind of way.

Under the Grain Futures Act of 1922, fifteen grain markets have been recognized by the Secretary of Agriculture as "contract markets," that is, exchanges that have agreed to make report to the Government as to their futures trading. Of all futures trading done in the United States, 99 per cent is done in four exchanges—Chicago, Kansas City, Minneapolis and Duluth. On the other eleven exchanges there is practically no futures trading. The Chicago Board of Trade accounts for 87 per cent of all futures trading done in the United States. Chicago is said to be the largest grain market in the world, the volume of its transactions being 30 times that of Liverpool. But its business is almost wholly futures trading. In other words, the Chicago Board of Trade is the greatest grain gambling institution in the world. It handles less actual grain than the Hutchinson (Kansas) Grain Exchange. There are six other grain exchanges in the United States that handle more actual grain than does the Chicago Board of Trade. Mr. Mehl says (p. 4):

> Ordinarily, and in recent years, the annual receipts of wheat at Minneapolis, Duluth, Kansas City, St. Louis, Omaha, and Hutchinson exceed those at Chicago.

On Monday, October 14, 1935, the Chicago Board of Trade, emboldened by its success in defeating the enactment of the Capper-Jones Bill (H.R. 6772) at the last session of the Congress, to which Bill we shall again refer in our concluding chapter, adopted two measures calculated to "broaden grain trading." One was a reduction in margin requirements; the other, the

restoration of trading in "privileges" after a lapse of more than two years, during most of which time the NRA Code was in effect. Now we may expect to see a fresh flood of grain gambling, mostly of the "scalper" type. This "privilege" of so "buying" and of so "selling" does not extend beyond the close of the following business day's session of the Chicago Board of Trade. This is the game of the "in and outers" restored to its former glory.

In explanation of this sort of "trading" we quote two paragraphs from an article written by Dr. Rudolf Patzig, appearing in the October 16, 1935, issue of the *Chicago Journal of Commerce,* as follows:

> Such transactions are called privileges because they give the buyer a certain right, privilege, or option. They are also referred to as "indemnities" because they are commonly used as a means of insuring against severe loss on grain market commitments. Besides "bids and offers" they are also called "puts and calls" and "ups and downs."
>
> Trading in bids and offers on the Chicago Board of Trade had been carried on for over forty years. Following 1921, they were discontinued for a time as the Futures Trading Act imposed a prohibitive tax of 20 cents a bushel on them. Subsequently, this tax was repealed. In August, 1933, the directors of the Board of Trade took action to suspend privileges trading following the violent market disturbances caused by excessively heavy privilege commitments at the time the United States abandoned the gold standard.

In passing, we would say that if these "privileges" actually constitute a legitimate form of insurance, we should call the attention to them of *bona fide* insurance

men. It is not quite clear how jumping into the grain market today and jumping out tomorrow can afford much insurance to anyone—unless it be insurance of the brokers' incomes.

Those who play the futures market are divided into two groups—the "speculators" and the "hedgers" —and all are gamblers. About 5 per cent of the futures trading in "wheat futures" in Chicago represents hedging. The rest is "speculating." Now that the gates are down to the "scalper-speculators," the estimate of 5 per cent hedging will be too high. What is all this fuss about hedging, anyway? Let us see.

Prof. Edwin W. Patterson, in *Yale Law Journal,* April, 1931, in his article on *Hedging and Wagering on Produce Exchanges,* says:

> Most arguments in favor of the present system of trading, especially the trading in "futures" (which is the storm center of the controversy), revolve around the necessity of having a market available for hedging. Without assuming that this is the only possible justification for the continuance of futures trading, one may safely say that it is the chief one. If a way could be found to preserve present hedging facilities and yet abolish wagering or excessive speculation, legislators would probably be glad to enact appropriate legislation. Yet no method has been found, and it is frequently assumed that a practical separation of hedging and wagering is impossible.

Professor Patterson is quite right in assuming that "a practical separation of hedging and wagering is impossible." The reason for this is that the hedger takes only one side of the wager; someone else, who is usually not a hedger but a "speculator" (gambler),

must take the other side of the wager. It follows that there must be maintained a large volume of gambling in "futures" if the hedger is to have the opportunity of hedging in "futures." The hedger sometimes bets on the "long" side of the "futures" market; but usually on the "short" side. When the hedger's bet is on the "long" side, his opponent's bet is necessarily on the "short" side; and *vice versa.* The grain hedger and the grain "speculator" (gambler) perform exactly the same operation, that is, betting, one being on one side of the wager and the other being on the other side—now on the "long" side, then on the "short" side, but always betting against each other, unless, of course, it is not a mere betting between the "speculators," as is usually the case.

The difference between a hedger and a "speculator" (gambler) does not relate to any difference in their respective operations in the "futures" market. Neither one intends delivery. It relates rather to the fact that, prior to the hedging operation, the hedger has actually bought or sold actual grain in the "cash" market. The hedger then steps over into the "futures" market and makes a bet which he hopes will protect him from possible loss in case of rise or fall, as the case may be, of the price of the "cash" grain which he has already actually bought or sold. The "speculator" (gambler), on the other hand, does not deal in the "cash" (merchandise) market at all; merely in the "futures" market. So it results, in the last analysis, that hedging and "speculating" (gambling) in the "futures" market are essentially one and the same thing—mere betting. The

purpose of the hedger in hedging differs, however, from the purpose of the "speculator" (gambler). Both gamble in "futures," but for a different ultimate reason. Both gamble in "futures" in the hope of winning the wager. To the "speculator" (gambler) that is an *end* in itself. To the hedger it is a possible *means,* if he should win the wager, of evening up his possible loss on his previous purchase or sale of "cash" grain. Why should he not try his luck at some other form of gambling to even up his losses? Then he would not need to have a "futures" market on which to place his bet. So might also the farmer, who does not hedge, try his luck at some betting game; that is, if he had no scruples against gambling, and if he were always sure to win. In fact, if it were humanly possible for each one who places a bet to win, we might all give up working and take up gambling! Anyway, the hedger has the keen satisfaction of knowing that his winnings in the "futures" market, when he *is lucky,* always come out of some other man's pocket.

The verb to *hedge* is defined in Webster's *New International Dictionary* as follows:

> To reduce the risk of a wager by making a bet against the side or chance one has bet on.

A good example of a hedge is where one bets with A, say $100, on one foot-ball team to win, and then bets $100 with B that the opposing team will win. In that way he hedges his first bet with his second bet, in which case he is protected against loss on his first bet. His two bets cancel each other. That is the difference be-

tween the gambler and the hedger in the grain "futures" market, with this explanation. The first risk the grain "futures" hedger takes is not the same sort of a risk that he takes in his hedging. He off-sets one risk against the other, but they are different sorts of risks. His first risk is in "cash" grain. It is an inherent, inevitable business risk which a grain merchant—a grain elevator man, let us say—takes whenever he buys actual grain as merchandise. After he has bought and stored the grain the price in the "cash" market may decline. In order to protect himself against such a loss he steps over into the "futures" market and "sells short" an equal amount of grain "futures." If the price of "cash" grain should decline, and if the price of grain "futures" should also decline *to the same extent,* he profits in his "futures" transaction what he loses in the "cash" market, for the gambler on the other side of the hedging wager has bet that the price of grain "futures" will rise.

Where the hedger "sells" grain "futures," he "sells short." The seller in the "futures" market always "sells short," *whether he be hedger or "speculator."* He does not intend to deliver grain; he intends merely to bet. In fact, he is "short" of grain, so far as the "futures" market is concerned. It would not be a hedge if he bought "cash" grain and then, if that were possible, sold it in the "futures" market. He keeps his "cash" grain, if he has any, for delivery in the "cash" market, not in the "futures" market.

Professor Patterson, in his article on *Hedging and*

Wagering on Produce Exchanges, to which we have already referred, says:

> Hedgers rarely, if ever, "expect" to make or take delivery on their futures contracts. . . . If a dealer sells futures with the expectation of making delivery of the grain, he is not hedging in the accepted sense of that term.

The same is true of the "speculator" (gambler). Professor Patterson continues:

> The customer who sells "short" does not expect to and cannot be compelled to make delivery; he is charged with the price differential. . . . The customer is practically never "compelled" or "required" to take delivery.

And he makes this further comment:

> The test of wagering as formulated in most statutes and judicial decisions thus makes no distinction between hedging agreements and other futures transactions made with mutual intention that no delivery shall occur in performance of the transaction.

And again he says:

> Legislation aimed at gambling in futures has usually, as in Mississippi, failed to discriminate between pure wagering and the hedging of an extraneous interest.

Now this question arises: *Why should the grain merchant hedge?* Presumably he buys in a low "cash" market and sells in a high "cash" market. That is what most grain elevator men, or any merchant in any other trade, would do. He does, without hedging, or he may do, without hedging, just what other merchants do who do not hedge. He buys when prices are

low and sells when prices are high—if he is a prudent business man. Of course, he takes the ordinary business risk of loss through adverse price movements. So do all other merchants. Why should the grain elevator man require that a "futures" (gambling) market be maintained for his benefit, if benefit it be, while coal merchants, furniture merchants, shoe merchants, and the like, have no such opportunity to hedge?

Assuming, for sake of argument, that there is such a thing as "strict" hedging, which is seldom the case, what advantage does the hedger get out of his hedging? Suppose he buys in the "cash" market and "sells short" in the "futures" market. If the price declines *equally* in both markets, which it seldom does, he comes out even—without profit and without loss. His loss in the "cash" market is balanced by his profit in the "futures" market. He has his merchandising profit for carrying the grain (his storage charges, so to speak), without the element of profit or loss from price fluctuations. By hedging he seeks to minimize the risk. The "speculator" (gambler), on the other hand, seeks to capitalize on the risk of price fluctuations alone. Both operate in the same "futures" market, and in the same way, but for a different ultimate purpose. One deals also in "cash" grain; the other does not.

Yet the fact remains that it is the "speculator's" (gambler's) "futures" market that gives the "cash" grain (merchandise) dealer his opportunity to hedge. It is not the hedger that gives to the "speculator" (gambler) the opportunity to gamble; it is the "speculator" (gambler) who gives to the hedger the oppor-

tunity to hedge. Hedging, historically, was an afterthought. The "futures" market is a gambler's device. The fact is that many grain merchants do not avail themselves of their opportunity to hedge.

But there is no such thing as "strict" hedging. First, the hedger is usually over-hedged or under-hedged; second, the parity of prices in the "cash" market and in the "futures" market is never constant, but the prices continually fluctuate in relation to each other. Sometimes the price in the "cash" market is lower than the price in the "futures" market; sometimes it is higher; sometimes it is much lower; sometimes it is much higher; but these prices never maintain constant parity with each other.

It is, therefore, possible for the hedger to lose both in the "cash" market and in the "futures" market. We have spoken of the hedger who "sold short" in the "futures" market in order to hedge his purchase of "cash" grain. We may speak also of the hedger who "buys" in the "futures" market in order to hedge a "forward" sale of "cash" grain at a time when the prices in the "cash" market are low and due for a rise. In such a case, if "cash" prices rise, he stands to lose on the "forward" sale of his "cash" grain. But it sometimes happens that when the "cash" prices rise the "futures" prices fall. If he hedges at such a time, he suffers double loss and his hedge falls down. In such a case he might better have staked his money on a game of poker. There is much truth in what Professor Patterson says, in his article on *Hedging and Wagering on Produce Exchanges:* "Departure from strict rule hedg-

ing makes it difficult to draw the line between 'hedging' and 'speculation'." But departure from strict rule hedging is the rule, rather than the exception, and no ordinary hedger can control the situation.

The "futures" market should be maintained, they say, in order that a large volume of "speculation" (gambling) may offer to the hedger an opportunity to hedge his "cash" grain. The need and justification for hedging, in turn, is often argued from the fact that the farmer has, under the law, the right to sell a crop of grain which he has not yet harvested; that the importer of woolen goods has, under the law, the right to sell such woolen goods before he has received them from the mills in England. Yet neither the farmer nor the importer is a hedger. It is said that the hedger, the farmer and the importer sell "short." If the farmer and the importer sell "short," they do so in a sense materially different than does the hedger. The hedger, in selling "short," does not intend to deliver. But the farmer and the importer positively *do* intend to deliver. All three cases are spoken of as involving "future delivery." As to the farmer and the importer, they do involve future delivery. In the case of the hedger, no future delivery is intended or expected. That is the meat of the whole matter. That is what makes the transactions in the cases of the farmer and the importer legitimate, and that is what makes the transaction in the case of the hedger a pure fiction, a mere bet or wager.

This phase of the argument in favor of hedging goes in a vicious circle. It is said that the grain mer-

chant needs to hedge because of the frequent and violent fluctuations of the quoted price of grain; therefore, he needs a "speculative" market in which to hedge against loss through such price fluctuations. Yet the fact of the matter is that it is the "futures market" that causes, for the most part, the very fluctuations of which the hedger complains!

This brings us to a consideration of the other question raised on behalf of the "futures" market: "The market-making function in which the futures market serves to enlarge trading interest and to direct the course of cash prices." Does "futures" trading direct the course of "cash" prices? Generally speaking, it does; but with what effect? Presumably it tends to depress "cash" grain prices when the farmer sells. Statistics in point are fragmentary; those available must be relied upon with extreme caution. Generally speaking, however, the movement of prices, up or down, in the "futures" market sets the pace for the movement of prices in the "cash" market. We quote Hoffman's *Future Trading,* page 36: "The cash market depends upon the futures market as a basis for bids." That is ordinarily, but not always, true. Upon what does the "futures" market depend as a basis for bids? It depends upon information received from news gathering agencies, upon manipulations of powerful operators, and upon gossip. It is notoriously known that Wall Street and LaSalle Street maintain the greatest gossip factories in the world. It is also notoriously known that professional gamblers manipulate the "futures" market, up and down, in spite of all that

can be done by the Grain Futures Administration to prevent manipulation. Professional gamblers desire, and strive to produce, a fluctuating, not a stable, market, and the "cash" market is undoubtedly influenced, to a large extent, by the fluctuations of the "futures" market.

Dr. Hoffman, in his *Future Trading,* page 36, says that "if, through poorly informed speculation, through dissemination of misleading information, or through the sheer force of large-scale speculative operations the futures market poorly and inaccurately interprets basic conditions, the result will be an artificial and distorted level in cash as well as futures prices." And he makes this suggestion:

> Every effort should be made to prevent its facilities from becoming instruments of manipulation, either through excessive speculation or through the circulation of false or misleading rumors, or of news designed to affect artificially the level of futures prices. It is only in the absence of influences of this kind that futures trading can be justified from an economic standpoint and can serve fully the varied interests of the grain trade.

Ordinarily the law of supply and demand has much to do with the fixing of prices of commodities. Not so in the grain market. The law of supply and demand is nullified, in large part, by the artificial influence of the grain "futures" market. We thus interpret these words from Hoffman's *Future Trading,* page 33: "Markets move in immediate response to active buying and selling. In a purely cash market the volume of buying and selling is limited by the amount of the commodity and

the rapidity of turnover. But in a futures market about the only effective limits are the margin requirements:"

We quote further from Hoffman's *Future Trading,* page 9:

> Depending therefore upon the type of price fluctuation one had in mind, and the extent to which the underlying causes of these fluctuations can be accounted for, it is possible to demonstrate either that cash prices are very closely and dependably linked to futures prices or that this relationship is a very loose and uncertain one. And from this the conclusion may be drawn either that the futures market is of real service as a hedging and market-making device or that it is of little practical value.

Ordinarily "futures" market prices are higher than "cash" market prices in order to compensate for carrying charges on "cash" grain. But, at the time of the oncoming of the new crop, "futures" prices usually drop considerably below the prices then being paid on the "cash" market for the remainder of the old crop, if the remainder of the old crop is relatively small. The general effect of the "futures" market is to pull "cash" prices down. There is, however, so much conflict and confusion involved in studying incomplete and more or less unrelated figures that one has difficulty in concluding that the "futures" market serves any useful social or economic purpose.

The fact remains that, even if there be any economic advantage derived from the operation of a "futures" market, either to the benefit of the brokers or to the hedgers, or both, someone must pay the bill. Profits and commissions derived from a fictitious market, such

as is the "futures" market, cannot be drawn out of thin air. What the hedger wins in a "futures" market comes out of some loser's pocket. Practically all of the operations of the "futures" market—the hedging operations and the "speculative" operations—are pure gambling. If there be any economic advantage in this gambling process, it is certain that that advantage is someone's loss. The public might better learn that it cannot get something for nothing, particularly by playing the "futures" market; and if the public did not play the "futures" market, there would be no "futures" market. It is a device to ensnare suckers, of whom, we are told, one is born every minute.

"Playing the market" is to be deplored, particularly the commodity market. Gambling in the fluctuation of the market price of General Motors *stock* does not affect the price of automobiles produced by that company, but gambling in *"grain futures"* does affect the price of grain.

CHAPTER IX

Selling Stocks Short

WE have seen, in the preceding chapter, that one who "sells" in order to assume a position in the grain futures market always "sells short." That is, he does not intend to deliver, has no grain to deliver, is "short" on grain. If he actually does have grain on hand, he expects to use that grain to make delivery in the cash market, not in the futures market. This is true of the hedger who takes the "short" side of the market. This is true of the "speculator" (gambler) when he takes the "short" side of the market, that is, when he "sells." Those in the futures market are always "short" on grain, whether they have "cash" grain or not.

The same is true, in principle, in the stock market. However, the stock market is not so sharply divided into distinct departments—cash market and futures market. Sleight of hand is more easily practiced with reference to "delivery" in the stock market than in the grain market. In the grain futures market a gambler makes no attempt to make "delivery." It is physically inconvenient to do so. Not so in the stock market. One cannot easily fake the delivery of 100,000 bushels of wheat, but a clever stock broker can easily fake delivery of a paper certificate of 100,000 shares of stock. Stock brokers say, in effect: "The courts insist

on delivery; then, there shall be delivery." So the rules of the New York Stock Exchange require that "delivery" be made not later than 2:15 p.m. of the second business day next following the "sale," even though the "sale," or pretended "sale," be a "short sale," as all pretended sales are. Pretended sales are "short sales;" pretended purchases are "margin purchases." If a *bona fide* sale of stock be made, then delivery is actually made to the *customer* who buys the stock. This is, of course, as it ought to be. But if it is not a *bona fide* sale, but a pretended, fictitious sale, a mere gambling transaction, then the "delivery" is likewise fake —the broker still holds the stock. In that case, it is a "delivery" with strings tied onto the stock. The delivery is not such as would be made in an out and out purchase and sale. Devious dealings are had to make it appear that delivery has been made. Whatever "delivery" is made is made to the broker, not to the customer. In all of these gambling transactions in the stock market, whether on the "long" side (the "buying" side) of the market or on the "short" side (the "selling" side), the stock certificates are juggled around in the offices of the brokers; they never get into the hands of the pretended "buyers" or "sellers."

A "short seller," whether in the grain futures market or in the stock market, is invariably a gambler in price fluctuations. In the former case no delivery is even attempted to be made; in the latter case a very clumsy, shifty pretense at delivery is made.

But the rule of law is not, as the stock brokers pretend to believe, that there shall be delivery, but that

there shall be *intent* to deliver, which goes directly to the heart of the question of good faith or lack of good faith in the purchase and sale of corporate stock. Simple, straight-forward buying and selling and actual delivery of the thing sold is not gambling. Pretended buying and selling and pretended, back-handed delivery is gambling. In short selling in the stock exchange there is sometimes an admixture of legitimate buying and selling and fictitious buying and selling. Who knows, but the brokers concerned? It is a devious process, involving four distinct operations, and the chain of title to the stock could not be followed by a Philadelphia lawyer, even if he were in on the secrets of the brokers' hearts.

Thus the courts are sometimes fooled as to what was the real intention of all of the parties and their respective brokers in this four-fold transaction involved in the effort to make a "short sale" appear to be something other than it really is. If the short seller's brokers would permit him to tell the truth he would say, in effect: "I have no stock to sell; I do not wish to sell any stock; what I want to do is to bet that the price of the stock in question will decline." All that anyone needs to do who wishes to play the stock market, either on the "long" side or on the "short" side, is to establish a brokerage account and trust his broker so to shape the transaction that there will be little likelihood of his running afoul of the law. The short selling customer, as also the long buying customer, who wishes only to bet, never sees any certificate of stock, nor wishes to see any. His broker attends to all of that.

Such pretense could never be perpetrated in a grain futures market, where no pretense of delivery is, for obvious reasons, ever made. It may be proper to add that "selling against the box," in the stock exchange, is not, when properly viewed, "short selling."

Let us repeat. This rule of law that there must be intention to delivery *and that there must be delivery* is troublesome, indeed, to all stock and commodity gamblers and their brokers. In the grain futures market they bluff it through on the pretext that, however unlawful the transaction may be, there is economic validity in it. In the stock market they make a pretense of legality by attempting to make it appear that delivery has been made. The rules of the New York Stock Exchange, as we have said before, require that when one sells stock he must make delivery not later than 2:15 p.m. of the second business day. If he has no stock, what shall he do? Since the "customer" is not so foolish as actually to buy, at the same time, the stock that he desires to sell short, thus cancelling both deals and incurring double liability to his broker for commissions as well, he leaves it to his enterprising broker to find him a way in which he can bet that the market will decline without being under necessity of actually buying or selling anything and without violating the law and running counter to the rules of the stock exchange.

The short seller cannot buy, for he believes that the price will go down, not up. He cannot sell, for he has no stock. Then, behold, his crafty broker "borrows," or pretends to borrow, from one of his other

customers, a stock certificate already in his own possession, or from a brother broker or his customer, often without the knowledge of the customer, *converts that stock into cash* and credits the proceeds to the short seller's account. The theory is that a "sale" has been made and credited to the already established account of the short seller. Nobody knows just what has been done, or how, except the brokers concerned. But that "borrowed" stock must presently be replaced. Some time in the future, but not too far in the future, the short seller's broker "buys" an equivalent amount of stock to replace the "borrowed" stock. If, at that time, the price of the stock has declined, the short seller wins a profit, but if the price of the stock has advanced, the short seller suffers loss. Whether any of these several transactions involved in the short selling operation were real or fictitious only the brokers know. The short seller, however, knows that he has made a bet that the price would decline, and he knows whether he has won a profit or suffered a loss; and that is all that he does know, or that he cares to know.

It should be remarked, in passing, that the short seller can make a profit only if the *quoted* price of that "borrowed" stock declines or can somehow be depressed. By hook or crook he seeks to depress the price of that "borrowed" stock so that, in due season, he can replace it with cheaper stock. He hopes and prays that the price of the "borrowed" stock will decline, and his resort is not always to prayer. Usually it is to false and misleading rumors and disparaging remarks.

The fact of the matter is that the short seller has

not sold anything at all. The stock certificate is not a commodity. Paper is easily juggled. Fancy a short seller of 100,000 bushels of wheat futures "borrowing" 100,000 bushels of actual wheat so that he may make delivery by 2:15 p.m. of the second business day following the short sale!

If the short seller of corporate stock has not sold anything at all, what has he done? His broker has, in effect, simply borrowed for his customer the *proceeds* of the sale of the "borrowed" stock.

But, in the last analysis, this transaction is bucketing, however the transaction be handled. When he "covers" his short sale by "buying" at some future time when, as he hopes, the price will be low, he is not buying anything then. He is simply using the proceeds, or part of the proceeds, of the sale of the "borrowed" stock to buy other and cheaper stock with which to replace it, if, in fact, the transaction is anything more than mere bookkeeping. The net result is that he has neither sold nor bought any stock at all, but, thanks to his obliging broker, if he has guessed right, and if the market price has declined, he is in pocket to the extent of his "winnings," the difference in prices, less his broker's commissions.

Bruner, in his *Short Selling the U. S. A.,* says:

> The act of borrowing stock from one person and transferring it to a second person to make the delivery for the sale of a third person seems to have something in its nature other than that which is a natural element of the ordinary business transaction. This is especially so if the one whose stock was borrowed did not know that it was being bor-

> rowed and used for a deal, the purpose of which was to profit at his expense in the lowering of the price of the stock borrowed. How such a procedure could have been allowed to exist for the number of years that it did exist almost challenges the sanity of mental conception.[1]

The simple fact of the matter is that the short selling of stocks is not on the square, however it may be conducted. It serves no legitimate purpose. "Short selling" and "margin buying" are illegitimate twins. Neither is buying or selling. They merely furnish instrumentality for gambling and for the enrichment chiefly of gambling brokers. Short sellers profit, if at all, by their pessimism; they destroy values; they prolong depressions. The short selling of stocks is a most vicious form of stock gambling. But short selling depends on margin buying. Both are in violation of the law as stated in the decisions.

If short selling were on the square, why all the circumlocution, circumvention and devious dealing? The United States Supreme Court, in the case of *Provost v. United States,* 269 U. S. 443, 46 S. Ct. 152, 70 L. Ed. 352 (N.Y.), has pointed out that there are, *as to form,* at least, four distinct transactions involved in the short sale of corporate stock: (1) transfer of shares from short seller's broker to purchaser; (2) transfer of shares from owner (lender) to short seller's broker; (3) transfer of shares from second seller to short seller; (4) transfer of shares from short seller to lender. This is not the exact chronological order, but it follows the statement of the court. The short seller never acquires title to the stock he sells; his broker

[1] D. McD. Bruner. *Short Selling the U. S. A.*, p. 223.

(while the title is still in the "lender") sells it on behalf of the short seller to an innocent purchaser. Neither the short seller nor his broker acquires title to the stock which the short seller is supposed to be selling. It is all a mere matter of bookkeeping, anyway, and the question of title is not involved. There is a good deal of legerdemain involved in the short sale, both going and coming. On the return trip the short seller, in covering his short sale, presumably "buys" stock and then presumably substitutes it for the stock which his broker has "borrowed" from the "lender." And all of these involved transactions are made necessary, in form, at least, by an inconvenient rule of the Exchange requiring delivery of the stock by 2:15 p.m. of the second day following the short sale, so that the courts will be fooled into thinking that purchases and sales have actually been made.

Some broker's "clever" lawyer will be apt to say that the *Provost* case, *supra,* holds that a short sale is valid under the law. It does nothing of the sort. That was a case where the Department of the Treasury of the United States was defending against an action brought by the brokers (on both sides of the short sales) to recover back from the Treasury the money they had spent buying 2c tax stamps on transactions numbered 2 and 4, as above set forth. The brokers admitted that taxes were properly paid on transactions 1 and 3, but contended that the stamp tax should not have been exacted by the Government on the other two transactions because they were not, in reality, purchase and sale! The court held, however, that, even

though they were not transfers, in the strict legal sense, they were "deliveries" under the rules of the Exchange.

In this *Provost* case, *supra,* the court took a good deal of pains in tracing the devious dealings involved in the short sale. This is how the shares are juggled, under the rules of the New York Stock Exchange:

> The "borrower" deposits with the "lender" their full market price; and, until the loan is returned, this deposit is maintained, by daily payments back and forth between the borrower and the lender, at the level of the market value of the borrowed stock; the lender usually pays interest on the deposit, but whether interest is paid or the borrower pays a premium for the "loan" of the shares, may be matters of agreement between them; the borrower contracts to give the lender, while the loan continues, all the benefits (such as dividends) and the lender contracts to bear all the burdens (such as assessments) incident to the ownership of the shares, as though the lender had retained ownership of them; concurrently with the receipt of the deposit, the lender delivers to the borrower, for his account, the certificates of the stock lent. The stock borrowed thus becomes available to the borrower for delivery upon his short sale. Upon demand of either broker, their mutual obligations may be satisfied by a "return" to the lender of the stock borrowed—i.e. of the same kind and amount of shares, which the borrower purchases, borrows, or otherwise procures for the purpose—and by repayment of the deposit to the borrower with interest, as agreed.

One thing is clear. The short seller *does not buy* the stock from the "lender" which he sells to the innocent purchaser. Title vests in the "innocent purchaser," if at all, simply because no one is in a position to contest his title, if there has been any sale at all. All

of these devious dealings are made necessary, at least in form, in order to circumvent the "iron-clad rules" of the Exchange which "clever" lawyers have devised to cheat the law! And so these gambling brokers are kept, by their "clever" lawyers, jumping from frying pan into fire. Honest men do not so deal!

Now, at last, the fat is in the fire. The last extremity has been reached. Let us turn now, for a moment, to what is happening on another sector. In Texas the law and the court decisions, as in most States, are rather hard on the bucketeers, the wheat and cotton gamblers. The latest device contrived by "clever" lawyers to safeguard the "rights" of their gambling clients is a resort to an arbitration board composed of fellow gamblers. In the case of *Smith v. Gladney,* 70 S.W. (2d) 342 (Tex.), the Court of Civil Appeals of Texas held that an award of arbitrators in favor of one broker against another broker may be made the basis of a court judgment, under Texas law, even though the award was incidentally connected with gambling transactions, as alleged by one of the brokers. The significant fact is that gamblers must first obtain an award of a board of arbitration before they may enter the portals of a court of justice, if their controversy arose out of gambling transactions. It is hard to conceive of any effective device which "clever" lawyers can contrive in jurisdictions where the courts will not honor an award of arbitration involving a dispute over the proceeds of gambling deals.

We should, in passing, state also that the court, in the *Gladney* case, *supra,* definitely denied the conten-

tion that *all* transactions on boards of trade, operating under the provisions of the Grain Futures Act of 1922, are validated and legalized by that Act. The Texas court, in this respect, followed the decision of the United States Supreme Court in the case of *Dickson v. Uhlmann Grain Company,* 288 U. S. 188, 53 S. Ct. 362, 77 L. Ed. 691, 83 L. R. A. 492, to which we have referred in a previous chapter.

And in the same connection we quote from the opinion of the Illinois Supreme Court in the case of *Miller v. Sincere,* 112 N. E. 664, 666, as follows:

> There is no reason why the Chicago Board of Trade, or stock exchange, or any other similar institution anywhere in the State, should be made a sanctuary for those who commit the crime of gambling on futures in grain or stocks. If it could lawfully be done, then it would be lawful to provide that persons could gamble at cards or with dice, or at other well-known gambling devices, in a board of trade or stock exchange building, but nowhere else.

Returning to the subject of short sales of corporate stock we may say that much has been written, pro and con, on the subject of the economic aspects of short selling. It is not possible, without protracting this discussion beyond reasonable length, to go into that phase of the subject in great detail. We should, however, make some suggestions.

It has been argued that margin buying and short selling, commonly but falsely called "speculation," should be encouraged on economic grounds. In the first place, they say that these practices swell the volume of trading. That, of course, is true. Fictitious

trading added to legitimate trading makes a greater volume of trading than legitimate trading alone, and that fact is reflected in the swollen incomes of the brokers. Therein is great economic advantage to the brokers. We cannot forget, however, that for every dollar made by brokers in negotiating fictitious sales and purchases many dollars are inevitabley lost by the public on one side or the other of each such deal. But, they say, stocks can be sold more advantageously in a large, active market, and at much less expense for sales service, than could be done in a small, inactive market. That, of course, is true. But we cannot forget that the public pays dearly for the privilege of maintaining a large, active market for the benefit of brokers and of those who have stocks to palm off onto the public. The stock exchange is a quick-action affair—very quick in siphoning the people's money into Wall Street. We feel that it would be in the public interest to slow down this high-geared machine, to give the public a little breathing spell, and to permit the big city banks, bulging with unused cash and credit, to help to finance these worthy industrial enterprises that have found it necessary to list their stocks on the exchanges to obtain needed working capital. Is not their credit good at the bank?

They argue, too, that short selling does not depress prices and destroy values. They say that for every "sale" there is a corresponding "purchase." That is true. What they neglect to say is that it is selling *pressure* that depresses the market and buying *pressure* that "bulls" the market. For every sale of anything

there is, of course, a corresponding purchase. But sometimes the selling pressure is great. At other times the buying pressure is great. And that is especially true when one adds to legitimate buying and selling a vast volume of fictitious buying and selling which looks for all the world to the by-standing public very much like the real thing.

For the benefit of those who wish to pursue this phase of the subject further we suggest the following books: We have already spoken of John T. Flynn's excellent book, *Security Speculation.* Another valuable book is D. McD. Bruner's *Short Selling the U. S. A.,* especially Part II. Then there is *Real Truth About Short Selling* by J. George Frederick. Reference should also be made to *The Case Against Short Selling* by A. Vere Shaw. And last, but not least, are what may well be called debater's handbooks: *Wall Street—Asset or Liability?* compiled by J. G. Hodgson, and *Short Selling—For and Against* by Richard Whitney and William R. Perkins.

While speaking of books it may be well to mention the following with regard to grain futures: *Hedging by Dealing in Grain Futures* by G. Wright Hoffman, *Speculation and the Price of Wheat* by Rollin E. Smith and *Crime* by L. Gough.

It is to be hoped that the people generally will familiarize themselves with this important subject. A strong, informed public opinion will go far in preventing a recurrence of the 1929 stock market crash and the ensuing depression, from which the nation still is suffering. We do not wish it to be understood that we

consider short selling to be a greater evil than margin buying simply because we have said more about short selling than about margin buying. Both are vicious practices. However, it should be borne in mind that the fictitious "buyer" is not put to the same bother in conforming to the forms of law as is the fictitious "seller." All he needs to do is to let his broker receive fictitious "delivery" for him. It is the complicated process involved in the forms of short selling that gives that subject its mystery and its prominence. It is as pernicious to "bull" the market by means of fictitious "buying" as it is to "bear" the market by fictitious "selling." It was gambling on the "bull" side of the market in 1928 and 1929 that brought on the collapse of October, 1929, and it was gambling on the "bear" side of the market, after the crash, that prolonged and intensified our sufferings.

Short "selling" should, however, be continued unless and until we are ready to attack the evil of margin "buying." Both of these fictitious forms of trading are gambling. Both should be destroyed.

Many persons seek in vain to understand the complicated rules of the stock and commodity gambling games, purposely made complicated. College professors talk solemnly and learnedly of the principles of short selling, of margin buying, of futures contracts. The important thing, which they seem not to understand, is to know that all of these elaborate rules are but camouflage and window-dressing for gambling games.

Let us clean up our market places!

CHAPTER X

Wall Street and Washington, Inc.

AN amazingly frank discussion of the operations of Wall Street, from the Wall Street point of view, is the book entitled *Wall Street and Washington,* written by Joseph Stagg Lawrence, then of Princeton University. The term "Inc." did not appear in the title of the book, but its omission was obviously an oversight. It was evidently not an oversight that "Wall Street" comes before "Washington." It is the most extravagant piece of special pleading for special interests that one could hope to see. The book was published in the summer of 1929. It makes ludicrous reading at the present time.

Desiring in our book to make comment on the subject of *Speculation versus Gambling,* as treated in *Wall Street and Washington,* we wrote the author, at Princeton, as the owner of the copyright, for permission to copy *verbatim* into this book pages 138 to 146, inclusive, so that the reader might see for himself an unexpurgated version of the Wall Street view. From that point of view there may or may not be some difference between speculation and gambling, but, in any event, it is argued, gambling is not wrong. It is, rather, a commendable virtue; or, to use the author's words, "If it yields pleasure and enables a man to take his mind from other matters, it is productive in the highest sense."

The letter, which we received in reply to our request for permission to print those passages in this book, follows:

NEW YORK STOCK EXCHANGE
COMMITTEE ON PUBLICITY
Joseph Stagg Lawrence

January 10th, 1935

Mr. Ernest D. MacDougall,
4000 Cathedral Ave.,
Washington, D. C.

Dear Mr. MacDougall:

Mr. Lawrence has received your letter of December 31st and has requested that I advise you he is perfectly willing to have you use his statements on the subject of speculation. He also states he would very much like to receive a copy of the book when published.

Very truly yours,
(Sgd) Carolyn Mills
Secretary to Mr. Lawrence

CEM/PJP

The passages from *Wall Street and Washington,* which we quote, are as follows:

SPECULATION VERSUS GAMBLING—RISK AS A DISTINCTION

Another source of opposition to speculation is its identification with gambling. Now it is no easy matter to draw the line between gambling and speculation and between the latter and investment. The existence of risk is not an adequate distinction. Nothing that man does is entirely free from the "aleatory element." The responsibilities of parentage represent a continual round of hazards and uncertainty preys upon us from the day of birth until we ourselves answer the final summons. Every business venture

involves a speculative commitment. One of the sharpest critics of the present speculative movement, a Southern Democrat, who on a recent occasion demanded the resignation of a great New York banker from the Board of the Federal Reserve Bank of New York because that director's own bank stepped into the breach at a critical moment to help the stock market, himself invested liberally of his money and energy to secure the election of a Democrat during the recent presidential campaign. In view of the result, it must be evident that his commitments were speculative in the extreme.

If uncertainty of outcome be the test of gambling, then the Democrats of the past ten years have been political gamblers of the darkest hue. When the farmer sows his seeds he is staking his substance against the elements. Every operation is fraught with risk. Christ himself took a chance. A man's judgment may be indicted when he courts extravagant risks, but certainly not his morals. The enterprising character of American citizens has been attributed to the courageous and unflinching willingness to face uncertainty which they inherited from their pioneer forefathers. How else can the adventure of Columbus, the voyage of the *Mayflower,* the American Revolution, the settling of the West, the daring enterprise that sends our religious and commercial missionaries to every corner of the globe be viewed than in the light of ventures in heavy bondage to the fickle goddess of chance? This world of ours would be a dreary place indeed if the element of risk were excluded from the market place. The interest which life itself holds is predicated upon a measure of uncertainty.

Most text books in economics speak of the enterpriser as the risk taker and nowhere is there a hint of odium attached to the designation. For reasons which may perhaps be discovered in the age-old antagonism between country and city, between the rural hinterland and the busy urban

community, between elementary production on the one hand and trade and commerce on the other, Wall Street has always been considered the stage for a particularly vicious type of risk-taking. In the pure and virtuous spaces of the interior anything which takes place in Wall Street has a sinister aspect and money earned in the stock market has the same taint as that which is won at gaming tables. It is not necesary to point out that this "truth" is assumed rather than demonstrated.

The denial to the American citizen of his right to take a chance would condemn American enterprise to unrelieved atrophy. We may conclude on this point that the existence of risk is not an adequate or desirable distinction between gambling, speculation and investment.

Speculation and Gambling—Technical Execution of Transaction as a Distinction

Another attempt to distinguish between speculation and gambling is based upon the technical execution of the transaction. The courts have held that speculation becomes gambling when trading does not lead and is not intended to lead to the actual transfer of the property dealt in. The attempt to apply this distinction will immediately lead us into absurdities. Upon this ruling the use of the gold settlement fund in Washington by the Federal reserve banks immediately becomes gambling because the gold, the property dealt in, is not actually transferred. The application of the ruling would disrupt all our commodity exchanges. Wheat, cotton and other great staples when harvested are lodged in warehouses and a large proportion of the subsequent trading in these commodities takes place without any actual transfer of the property dealt in. Finally the Stock Exchange requires execution of all transactions which is so well facilitated that it serves as no restraint at all upon the speculative act. Let us regard this distinction as one of the numerous sterile progeny of the law.

Knowledge as a Distinction

A much more logical distinction is that stock speculation becomes gambling when the operation is unguided by knowledge and intelligence. It is the blind cast of the dice which places the player completely at the mercy of chance that makes him a gambler. But here we must stop. What constitutes adequate knowledge of the investment situation into which the player projects himself? How well must he know his shares and the attendant value elements in order to graduate from the moral kindergarten of the gambler and matriculate in the higher institution of speculation? Shall we apply a literacy test to the investor before we permit him to purchase a share of stock? Who is there competent to administer such a test? Certainly the man who shuts his eyes and bets is a gambler. He might as well resort to faro and the roulette wheel. For practical purposes, however, it is impossible to set him apart and say to him, "Thou shalt not."

Artificiality of the Hazard as a Distinction

Neither the existence of undue risk, the actual transfer of property nor the degree of intelligence and knowledge which the parties bring to their operations are sufficient to distinguish speculation from gambling. A hope for an adequate basis of distinction arises from the degree of artificiality of the hazard on which sums are staked. We can say with a fair measure of safety that a given operation is a gambling venture when the risk is artificially created or extracted from the course of business, political, sporting or natural events for the purpose of providing that uncertainty of issue which is the fulcrum of the gambling act. When one individual offers a thousand dollars as hostage for the superiority of his judgment concerning the cast of the dice, the turn of the wheel, the combination of cards, the fastest horse, the number of shares exchanged on the stock market in a given day, the number of votes a given

candidate will receive, the winning football team or prize-fighter, we have gambling pure and unadulterated.

This is modified insofar as in the latter events a person's judgment may be influenced by a sense of loyalty to the desired issue. In the case of the dice, the wheel and the cards, we may say that the game is deliberately fostered for no other purpose than to provide the gambling act with the necessary uncertainty of issue. In the case of the other events which are a part and natural accompaniment of life we may say that the uncertain sequence of events or the magnitude of the numerical results have been purposely extracted by parties without other interest in the issue for the sole purpose of providing the gambler's hazard. Doubtless the stock market with its prolific succession of uncertainties constitutes a fertile hunting ground for those pure chances which the gambler finds necessary. That is hardly an indictment of the stock market and it follows that the stock market should be regulated or restrained no more than that coins should be minted with similar reliefs on both sides because men sometimes match them in what is undoubtedly a pure gamble.

Speculation and Morality

Those who would regulate the stock market in the interest of a higher morality are not troubled excessively by the inability to make the distinction between gambling and legitimate speculation. The Puritan instincts of the community are scandalized by the spectacle of men and women "doing nothing" and enjoying the fat of the land which honest folk can get only by the sweat of their brows. Call it speculation or gambling, it is wicked. The institution which permits a premium on idleness and a penalty on industry is immoral. This note appears in the Report of the Hughes Committee on Speculation in Securities and Commodities: "Complaint has been made of branch offices in the City of New York, often luxuriously fur-

nished and sometimes equipped with lunch rooms, cards, and liquor. The tendency of many of them is to increase the lure of the ticker by the temptation of creature comforts, appealing thus to many who would not otherwise speculate." Here is the devil in garments of silk.

It is difficult to over-emphasize the importance of this moral element. There is a profound Calvinistic sub-strata in this country which views stock speculation with uncompromising severity as a lapse in morality. The great increase in corporate organization and the tremendous diffusion in the fractional shares of proprietorship together with the improvement in the character of the management of great corporations and the effective regulation of the State have combined to modify this attitude. Nevertheless, exceptional activity in the stock market when identified with gambling causes the moral fur of the nation to bristle.

Immorality of Gambling

The immorality of gambling is by no means self-evident. It is an artificial excrescence upon our ethical code, no more deserving of condemnation than dancing or theatre-going or cigarette smoking, although the identical purists lump all four together. Gambling is held to be immoral because men spend time at it which might be devoted to other purposes, because it is anti-social and leads to no increase in values, because the various participants sometimes get something for nothing and sometimes lose something without getting anything in return.

This can scarcely be considered a strong bill. If a man derives pleasure from a game of poker he is as much entitled to it as are other people who derive pleasure from attempts to improve the morals of their neighbors. There is no accounting for tastes. If a man gains recreation from matching his judgment against others at the races, it is rather difficult to see how that is detrimental to the community or in any way impairs the capacity and opportu-

nity of others to enjoy life. Pleasure is a legitimate end. Sadism is not a virtue of a high order. If gambling yields the thrill of pleasure without causing injury to others, we fail to see any reason for condemning it. If it yields pleasure and enables a man to take his mind from other matters, it is productive in the highest sense.

The ultimate end of all economic activity is income and of all income the highest is psychic income. Our material flow of pay means nothing to us unless it can be translated into satisfactions. The meal we eat, the clothes we wear, the house we live in are valuable to us only to the extent that they produce that pleasurable change in the state of our feelings which we call psychic income. Many economists today define ultimate income as that stream of pleasurable sensations which accrues to us within a period of time. If any form of gambling yields such a sensation without injury to others, it furnishes its own adequate justification. Like everything else, it may be abused and no brief is here intended for the man who takes the savings of a life time and in a single mad fling tries to wrest wealth from the capricious lady who turns the wheel. He is a fool and to be pitied.

Ethics of Gambling

Perhaps the fairest non-Puritanic statement of the case against gambling is that of Professor Hardy of the Institute of Economics. According to Professor Hardy the gambler is anti-social. Since the purpose of all social organization is to increase that stream of goods and services which constitute the social income, any activities which fail to reveal a net increase in values are anti-social. When a gambler wins, another loses, and one man's gain is literally another man's loss. The gambler is to be compared with the burglar and the confidence man, the only difference being that the loser loses by consent whereas with the burglar he loses by coercion and with the confidence man by deceit.

> In the second place energy devoted to mastering the art of gambling is wasted and very often the subject is rendered unfit for other work and becomes a wasteful and at times dangerous parasite upon society. We are not able to repeat his interesting discussion of the economic effects of the operation of the law of probability and we must content ourselves by saying that he balances the pleasure which the race has at all times derived from gambling against the loss involved in an unwillingness to co-operate. He is not at all willing to concede that "gambling belongs in the list of immoralities which an intelligent social policy seeks to prohibit by legal enactment."

Before we offer comment on the discussion above set forth we shall set down at this point two more short excerpts. The book, *Wall Street and Washington,* was written and published only a few months prior to the 1929 stock market crash. The falsity of the bold assertions in these excerpts is abundantly proven by the October, 1929, event, by the bank moratorium of March, 1933, and by the fact of the enactment by the Congress, in 1933, of the Securities Act, and of the Securities Exchange Act of 1934.

Here is one excerpt from pages 152-153:

> THIS BEING THE YEAR OF OUR GRACE 1929
>
> Certainly we can say that under such conditions the conduct of the stock market is affected with a public interest. If speculative excesses place the country's monetary reserves in jeopardy, then it is our duty to take measures which will provide the necessary safeguard. But how distant seems the day when the final reserves of our banking system rested for their security upon the caprice of the stock market. We are in another age. Unfortunately those who speak of speculative excesses placing the banking

structure of the country in peril forget that they speak in the year of Grace 1929. They unconsciously apply the conditions of an earlier generation to the present situation and fail to appreciate that a crash in the stock market will affect the fundamental soundness of our credit structure no more than a failure of the wheat crop.

And here is another excerpt from page 312:

THE EMISSIONS OF A PROVINCIAL MIND

These proposals are the curious emissions of a provincial mind. There is not the ghost of a chance that they will be adopted. They cast much light on the state of mind and the competence to deal with these problems, of the group which stampeded the Federal Reserve authorities into their ill-advised course of stock market repression. Direct legislative efforts would have accomplished very little for this group of radicals. By playing on the fears of the authorities they have succeeded in intimidating an administrative body and inducing it to take a course of action for which they could never have hoped to secure regular legislative sanction.

As we analyze the author's argument on *Speculation versus Gambling,* it is somewhat as follows:

1. It is not easy to draw a line of distinction between gambling and speculation. Nothing that man does is entirely free from risk. Even the Southern Democrats, who oppose Wall Street speculation and gambling, have themselves, during the past ten years (prior to 1929), been political gamblers of the darkest hue, for they, like the farmer sowing seed, took a chance of failure. However, that cannot be held too much against them, for Christ Himself took a chance. Therefore, if a man takes a chance, his judgment may be at fault but not his morals.

2. Economists speak, without odium, of enterprisers as risk takers, but those of the rural hinterland, in those pure and virtuous open spaces, are so backwoodsy and so behind the times that anything that takes place in Wall Street has to them a sinister aspect and the taint of the gambling table.

3. Risk alone is not an adequate or desirable distinction between gambling and speculation.

4. The distinction which the courts make between speculation and gambling, that is, that fictitious trading is gambling in the forms of trade, is just one of the numerous sterile progeny of the law!

5. A much more logical distinction is that stock speculation becomes gambling when the operation is unguided by knowledge and intelligence. but no one is wise enough to say how much knowledge a gambler must have to graduate into the class of speculators. Therefore, there is no one who can say to the stock gambler, "Thou shalt not."

6. The test of artificiality of the hazard offers some hope of making the distinction—but only a vain hope. In the case of dicing or playing the wheel or the cards, we may say that the risk is artificially created for the purpose of gambling, but, in the case of guessing the number of shares exchanged on the stock market in a given day (or of guessing the up or down movement of the price of a given stock) or of guessing the winning candidate for public office, the winning football team or the winning prize fighter, we may not say that the risk is artificially created for the purpose of gambling. It, therefore, follows that, in order to restrain stock gambling, the stock market should be regulated or restrained no more than that coins should be minted with similar reliefs on both sides so that men may not be able to gamble by tossing coins.

7. Puritans do not distinguish between speculation

and gambling, but condemn every man who does not live by the sweat of his brow. The devil in garments of silk sits in Wall Street and increases the lure of the ticker-tape by the temptation of creature comforts.

8. The Calvinist views speculation (and gambling) as a lapse in morality. But the immorality of gambling is by no means self-evident. They ought not to condemn gambling because it is a waste of time and money, because it is anti-social, because gamblers sometimes get something for nothing and sometimes lose something for nothing. If gambling yields pleasure and enables a man to lose his mind in the flight from lesser troubles to greater and greater ones, then gambling is productive in the highest sense!

9. The motive of all economic activity is income and profit. If one can, at one and the same time, get both economic and psychic profit, or even psychic profit alone, see how fast one short-cuts to ultimate pleasurable sensations! But one must be careful not to spend his whole subsistence in seeking such sensations, for they might conceivably turn out to be painful rather than pleasurable sensations!

10. Professor Hardy, of the Institute of Economics, says that gambling is anti-social and uneconomic. Well, what of it? Even Professor Hardy does not contend that gambling belongs in the list of immoralities which an intelligent social policy seeks to prohibit by legal enactment.

That is the end. Human ingenuity could go no farther. The argument, if argument it can be called, slips cog after cog until no cogs are left. Starting out with the bold attempt to prove to the opposition that speculation is not to be identified with gambling, that there is a real difference between these two sorts of Wall

Street operations, all tests ever heard of in Wall Street are tried and abandoned in rapid succession. The element of risk is not the true test because Southern Democrats, opponents of stock gambling, have taken very great risk of defeat at the hands of the invincible Republicans! Even Christ took a chance and was defeated. But the dwellers in the rural hinterland, who oppose gambling, do not understand how risky is everything in the city, with its big, empty factories and bloated holding companies and hungry shareholders. They do not understand that it is the tail that should wag the dog; not the dog the tail!

Nor is the test announced by the courts of any use to Wall Street. That test is just one more of the many "sterile progeny of the law."

Nor is the test of artificiality of hazard of any practical use. There are too many exceptions to the rule.

But why make a distinction, after all? Who said that gambling is wrong, anyway? Only the Puritans and the Calvinists and the dwellers of the rural hinterland! On the other hand, Professor Hardy says that, although gambling is anti-social and uneconomic, it is not such an immorality that calls for prohibition by legal enactment! Let stock gambling be what it may, moral or immoral, economic or uneconomic, social or anti-social, Wall Street is content to let well enough alone and continue the practice so long as the police shall stay away!

The reader will understand that it is difficult to take this sort of argument seriously. It is not argu-

ment. It is an appeal to ignorance, passion and prejudice. It is an attempt to stir up animosity between the rural inhabitants and the city inhabitants, and to line up definitely the Republicans against the Democrats on the Wall Street question. It is an attempt to set the white-collar workers against those who perform manual labor. In this day it is too late to make such an appeal. Intelligent people today understand very well that one who performs *useful service to society,* in whatever legitimate field of activity, is just as much a worker, and entitled to his pay, as is the man who earns his livelihood in the sweat of his brow. It is the gambling, grafting parasite, who performs no useful labor, of brain or brawn, whom all right-thinking men condemn; and so long as stock exchanges clutter up their corridors with gambling parasites, just so long will they continue to receive the condemnation they so richly and justly deserve.

If Wall Street propagandists really wanted to know what is the difference between speculation and gambling, they could quickly find out by consulting the dictionary—or Chapter II of this book!

The stock argument that those who gamble advance in defense of the practice is that gambling is a form of amusement. Yet, strange as it may seem, those who game for amusement are not the same persons who game for money. Gambling is gaming for money or for money's worth. Gaming for amusement is not gambling. And, strange as it may further seem, one of the persons playing the game *for* money *pays* money for the "amusement" the game affords

him, while the other player, who surely gets a greater amount of amusement out of the game than the loser, gets his two-fold amusement and not only pays nothing for it but receives additional compensation in the form of winnings from the losing player. Playing games for amusement should be encouraged; not playing for money. At a football game one pays an admission fee to see the game. The admission fee is what he pays for his amusement. If, after entering the grandstand, he bets with another spectator on the outcome of the game, the money so staked and lost bears little, if any, relation to his amusement which the game affords. The betting is not done for amusement; it is done for money; and, strange as it may seem, the money is paid by the one who gets the least amusement! It is generally acknowledged, however, that if, in football, the betting were done by the players, the game would soon pass out of American athletic life. A game that is not played for amusement only is not much of a game!

It may be that it is excitement, not amusement, for which gambling is practiced. In that case, we shall wait until physicians prescribe gambling for low blood pressure; and then we shall wait further for the low blood pressure! It is not "psychic utility" which one derives from gambling; only neurosis! No normal, healthy man needs the stimulation of gambling. One has only to witness the violent antics of stock gamblers on the floor of the exchange or of wheat gamblers in the wheat pit to arrive at the conclusion that such men must be neurotics!

Gambling *does* make a man forget himself. He worships Lady Luck, seeks out risks upon which to bet, stultifies and subverts his mind.[1] And then he proceeds to embezzle, to steal, to swindle, to kidnap, to kill and, finally, to commit suicide. Supreme virtue this, indeed!

No argument is needed to prove that gambling and other forms of mercenary crime go hand in hand. One has only to read the headlines of the newspapers to be convinced of that fact. Illustrations might be multiplied without end. One thing with which the papers have recently been filled is that Bruno Richard Hauptmann was first a stock gambler, then a kidnapper and killer. The people of this nation are beginning to awaken to the significance of the close, intimate connection between gambling and other forms of crime for profit; and it is high time that they did! If we, as a people, are to retain any respect for property rights, *gambling must be stamped out of our national life*. We are known as a nation of gamblers. Laws we have. What we most need, and must have, if our national life is to be preserved, is *a quickened conscience on the part of the people generally*. Gambling is rampant everywhere, among all classes of our people. How can polite society, arrayed in formal evening attire, frequenting the gilded gambling palaces night by night, contributing to the war chest of gangsters, hope to escape impolite and violent crimes committed by men no less honorable, though less cultured (?) than they?

[1] W. Douglas MacKenzie. *The Ethics of Gambling*, p. 26.

Gambling does not pay from any point of view. It is economically an unsound base on which to build. It is a tremendous economic waste. The annual "take" of the "numbers" racketeers in this country is said to be more than $300,000,000.[2] That is but a "piker" game—a poor imitation of the stock and commodity gambling game. Stock and grain gambling run into untold billions of dollars each year. It is said that ninety-five per cent of all gambling customers of stock and grain brokers lose out in the end![3] The Supreme Court of the United States, in the case of *Chicago Board of Trade v. Olsen,* 262 U. S. 1, 43 S. Ct. 470, 67 L. Ed. 839, said:

> "Witness testified . . . that the total bushels of grain sold for future delivery on the Chicago Board of Trade in a year reach nearly 20,000,000,000 and that the amount of grain actually delivered under such contracts is not 1 per cent."

And *seventy-five per cent* of all trading in grains is "futures trading!" See *Chicago Board of Trade v. Christie G. & S. Co.,* 198 U. S. 236, 25 S. Ct. 637, 49 L. Ed. 1031.

It is amazing how impractical some of our leading professors of economics can be. They talk learnedly of production and distribution of wealth; of income in the form of wages, rent, interest and profit. Yet the largest income of all they seem to forget—the proceeds of crime, including gambling. It is unlawful income, but none the less real. How can there ever be anything like a just distribution of wealth, on eco-

[2] Dayton Stoddart. *Millions and Murder* in *Today,* December 8, 1934.
[3] L. Gough. *Crime,* p. 19.

nomic principles, until and unless these gaping leaks are stopped? When one stops to think of the poorly paid school teachers, for example, who perform a most valuable social service, and then to think of the parasitic, gambling stock brokers gathering untold riches, performing little, if any, useful service to society, it is enough to make one's blood boil with indignation. Such things ought not to be. And such conditions cannot continue without inflicting upon the nation infinitely worse catastrophe than has ever yet been suffered by a patient people.

We have spoken much of *Wall Street*. We should have a definition of that term. Hodgson defines it thus:

> The term "Wall Street" in the world at large has two meanings. In a restricted sense it means the New York Stock Exchange and the brokers who are members of it. In a broader sense it means those financial institutions—banks and investment houses as well as brokers—which center about that famous street, and whose activities are so often reflected by the Stock Exchange itself.[4]

In a still broader sense, Hodgson goes on to say, it includes all Stock Exchanges and the broker's correspondents wherever they have their offices.

It is amazing how widespread is the influence of Wall Street! It is amazing how effective Wall Street propaganda has been! It is amazing to see honest, well-meaning bankers, not directly affiliated with Wall Street, and industrialists and manufacturers and business men champion the cause of Wall Street and argue heatedly in favor of short selling of stocks and other forms of stock gambling! One would naturally sup-

[4] James Goodwin Hodgson. *Wall Street—Asset or Liability?*, p. 3.

pose that the honest industrial world would resent the idea of good commercial capital being diverted into the maelstrom of Wall Street gambling!

What is the answer? Are "independent" bankers, industrialists and business men coerced by threats of Wall Street banks to call their loans or to refuse necessary commercial credit? Are they intimidated by secret, under-cover agents of Wall Street? Not all bankers and business men are crooks. Why, then, should honest men make common cause with commercial gamblers, grafters and swindlers? We have said very little about stock swindlers in Wall Street. That is a subject that would require many volumes adequately to discuss. The reason, however, why *some* bankers, industrialists and business men play along with Wall Street gamblers is that they themselves are gambling with the market price of the stocks of their own corporations, from the inside, to fleece the public. They are too eager for quick riches to abide the customary course of trade and manufacture. They want quick profits without waiting to earn them in the regular way. But what about the multitudes of honest business men who would not stoop to commit crime for profit? On which side of the controversy do *they* belong?

Wall Street has a most effective Publicity Department, while neither the people nor the courts have any such thing. Wall Street has methods of intimidating honest men that are awful to contemplate, and too little understood by the people. But an intelligent revulsion of public feeling can soon overcome all of that. May the day of deliverance soon come!

CHAPTER XI

This Paper Civilization

PROMINENT men, with Wall Street connections, have been very much agitated and perturbed during the last six years, fearing that the nation was about to be plunged suddenly into a war of revolution. The revolution of the sort which they expected did not materialize, and they are now calming their fears and making ready to attack the common weal with renewed courage. They cannot see and they cannot understand that evolutionary forces are now at work to reshape the social and economic life of the nation, and that the people are gradually gaining a vision of a new social order.

Yet, their fears of physical violence may have had much foundation in fact. It may be that the dreaded day is merely deferred for a short time. We have always supposed that honest, intelligent men could solve economic and social problems without resort to bloodshed. It may be that we have been in error on this point. It is said that civilization is in a race between education and catastrophe. It may be that our financial misleaders will not listen to reason. Yet it is too much to expect that the American people, patient and long-suffering though they be, will forever tolerate an intolerable condition—poverty in the midst

of plenty; needless unemployment both of labor and of capital.

Capital is said to be timid. Capitalists, in "fair weather," are bold. The composite posture of Wall Street is that of shrinking menace—in one posture shrinking in fear; in another posture menacing and threatening the nation. Do our capitalists object to being identified with Wall Street? Let them, then, disassociate themselves from the wicked ways of Wall Street!

What is it that Wall Street fears? Obviously Wall Street, for reasons best known to itself, fears the light of day. The scandalous revelations of perfidy, fraud and gambling that were recently brought to light in the hearings of the United States Senate Committee on Banking and Currency on the subject of Stock Market Practices were not willingly proclaimed on the witness stand. Wall Street threatens to prevent capital from being used in constructive commercial and industrial enterprise while investigations are in the offing or while regulatory legislation is under consideration. When a candidate for the Presidency, not approved by Wall Street, is before the people for election, the air is filled with threats of financial panic and depression. When Wilson was running for the Presidency, these threats were made. Wilson retorted that, if they carried out their threats to bring on panic and depression, he would hang them higher than Haman—for public gaze.

The fear of Wall Street and the timidity of capital is, for the most part, a cloak for monstrous effrontery.

If capital were on the square, why need it fear the honest administration of public affairs? Why should it demand a determining voice in the political government of the country? No sooner had Franklin D. Roosevelt been nominated for the Presidency than did Wall Street demand that he publish immediately the names of the men whom he intended to appoint to cabinet offices. By what divine right does Wall Street consider that it should dictate the President's appointments to his cabinet? Needless to say, Roosevelt did not comply with the demand. The American Bankers Association has been on strike against the people and their government, refusing to put idle capital to work until and unless the President should make immediate answer to their insolent questionnaire. Needless to say, Roosevelt did not answer their questionnaire. And the bankers are still on strike. The Chamber of Commerce of the United States, speaking for the big business men of the country, insisted on receiving Presidential promises as to governmental policies before giving the support of its membership to the recovery program of the government. These Wall Street interests have been slackers. First they plunge this country into the most serious depression it has ever seen, and then they refuse to help to reconstruct the ruins until and unless they have their own way with the government to enjoy the special privileges of a day gone by. Wall Street has consistently resorted to threats, intimidation, repression, and worse. Honest men do not attempt to practice repression on their neighbors. It

is only he who fears the truth who seeks to repress the freedom of free-born men.

If the people at last arise, by force and arms, to repossess themselves of the resources and wealth of their country, it will be because of the continued use of the repressive measures practiced by Wall Street. Education—a scientific search for truth—should be the way out of this mess. But Wall Street laughs "brain trusters" to scorn. Wall Street is not averse to the use of "brain trusters" in private business, but Wall Street objects to the government, on behalf of the whole people, making use of expert economic advisers!

Economic and social experts should be given a chance to solve our accumulation of economic and social problems. Wall Street laughs at education of the people, as at religion. They say that Christianity has failed. It may be so. But someone wisely remarked: "Christianity has never been tried." And so it is with education. On the matter of the problems which Wall Street presents to the country, education has never been tried. The expert propagandists of Wall Street have filled our schools, colleges and universities with an abundance of false propaganda. And learned professors have, for the most part, meekly accepted Wall Street propaganda as the truth, with little thought of making independent research to see whether these things be so.

We live in a paper civilization — hypocritical, crooked, perverse. The society in which we live is masked and camouflaged by plain and fancy paper, bearing plain and fancy deceits. We have, instead of the clear sunlight of truth, the artificial lights and

shadows — mostly shadows — generated by crooked, covetous finance. We have fraud and false pretenses clothed in the garb of sanctity.

Instead of the sound, simple doctrine of fair dealing, we have false and fraudulent propaganda. We have been taught to believe that black is white, and that white is black. We have been effectively instructed to believe that there must be hunger because there is too great abundance of food; that there must be poverty because there is plenty. "The Cretians are always liars." The reason is that they were first thieves and gamblers, then liars.

It would require a lengthy catalog to list the myriad lies that these greatest rumor factories of the world, Wall Street and La Salle Street, have foisted upon the country to its undoing. From this foul source have emanated damnable doctrines that have converted honest men into thieving grafters and gamblers, firm in the conviction that one must get while the getting is good; that the greatest of crimes is to be poor, though honest; that one is foolhardy, indeed, to tell the truth in the face of Organized Greed.

The time has come for red-blooded, liberty-loving, independent American men and women to quit acting as cowardly mollycoddles, pussyfooting away from the threatening power of predatory plutocracy, and to begin to call a spade a spade, to cease fearfully to tone down plain, truthful speech and sound doctrine, and to stop tickling itchy ears of covetous criminals while vast multitudes of the people are hungry and sick. We should follow, so far as we have ability, the

example of One who spoke as never man spoke before (or since)—plainly, pointedly, persistently—of the flagrant fraud and deceit, of the glaring injustice, of the outrageous oppression of the times in which we live.

It is not to be understood from anything that is here said about the dishonesty and false pretenses of Wall Street and La Salle Street that any particular person or persons are to be subjected to special personal criticism. Wall Street and La Salle Street are institutionalized and impersonal, and it would be difficult, indeed, even if desirable, to hold up to public view individual malefactors. It is the system, rather than the individual, that is at fault. It is undoubtedly true that there are large numbers of individuals involved in that system who abhor the falsity of their position and would welcome the aid of enlightened public opinion to effect a change.

The prime purpose of a stock exchange or of a commodity exchange is to afford a market place for the purchase and sale of corporate stocks or for the purchase and sale of commodities, as the case may be. The act of buying and selling a thing is a comparatively simple proceeding, with which most people are familiar and which most people can easily understand. Purchase and sale involve the making of a *contract,* oral or in writing, express or implied, covering the terms of the sale. And here is where the "clever" lawyer enters the picture to aid and abet the commission of *contractual crime.*

Not all of the contracts executed in the Stock Ex-

change or in the commodity exchange are fraudulent, fake or fictitious, but *most of them are*. Without benefit of crooked legal advice few crooked contracts within or without the exchanges, whereby men are swindled, would ever be drawn. That is not a "clubby" thing for one lawyer to say in reference to others of his profession; but if that be treason, then make the most of it.

In point of fact, the *bona fide* purchase and sale of corporate stock has come to be a very small portion of the business of the Stock Exchange. Most of the transactions are either swindling transactions or gambling transactions. Notwithstanding the crafty attempts of "clever" lawyers to lend to them a color of legality, the courts have repeatedly taken the position that, in determining the legality of a given transaction or series of transactions between customer and broker, or between any contracting parties, the court will look behind the form of a contract and enquire into its substance to determine its true character.

In order to constitute a valid contract there must be, among other things, mutual consent and agreement of the parties, and there must be legality of the object of the contract. Furthermore, fraud will vitiate a contract and render it void. A contract that has been procured by fraudulent means is not a contract at all, however craftily drawn, legibly signed, and artistically typed or printed. If, in fact, it is an attempt to obtain money or property under false pretenses, it is not a contract; it is a contractual crime. A gambling contract, under whatever name it may go, has an illegal

purpose for its object, and it is void and unenforceable. And most of the contracts in Wall Street and in our wheat pits and in our cotton exchanges are of that sort, strange as that may seem to the average citizen.

There is a wide field of criminal contracts in the commercial world—contracts vitiated by fraud, coercion, duress, illegality of object, and the like—in which our prosecutors and our professors in criminal law manifest little or no concern, thanks to the powerful influence of crooked finance. In fact, all *mercenary,* predatory crimes, except those committed by the direct taking or destroying of the money or property of another, are *contractual crimes.* The crimes of direct taking or destroying, compared with contractual crimes, are as a drop in the bucket. Crimes of direct taking or destroying are publicized; contractual crimes are played down and hushed up.

In these days practically all important business is done by means of written contracts. Whether written or unwritten, business transactions are contracts. A stock certificate is a contract. An agreement to purchase or sell stock is a contract. A bet or wager of any sort takes the form of a contract—illegal though it be. A bill of sale of an automobile is a contract. A deed to a lot is a contract. A mortgage of a homestead is a contract. A forged promissory note takes the form of a contract. A check is a contract. An agreement to construct a school house is a contract. A lease of a dwelling or apartment is a contract. An agreement to buy a book or a vacuum sweeper is a contract. That is,

business transactions take the *form* of a contract, whether legal or not, whether criminal or not.

No business is transacted concerning services or property that is not done by means of a form of contract, oral or written on paper. *All crimes relating to property,* with few exceptions, *are contractual in character.* Crimes of fraud and deceit, false pretenses, breach of trust, coercion, duress, confidence games, gambling, and so forth are *contractual crimes.* The volume of direct physical taking or destroying of another's property, which does not constitute contractual crime, so far as concerns the number of persons affected and the value of property involved, is trivial by comparison with contractual crime.

Business generally has suffered a decline in ethical standards because of the notoriously depraved methods of Wall Street and La Salle Street. Not all business transactions are swindles, but one would need to hold his nose should he undertake to list the multitudinous examples of fraud and bribery and corruption and swindling and embezzling and grafting and gambling and chiseling and racketeering that have become increasingly in vogue during our own generation. In every business there are many high-minded men who hesitate to indulge in unlawful or criminal practices or in unfair competition. But there is always a large outer fringe of gamblers, bootleggers and unscrupulous competitors whose unethical, if not criminal, practices tend to lower the standard throughout the industry. This was one of the most useful functions of NRA—an attempt to eliminate unfair and unethi-

cal, as well as criminal, competition. But a large volume of stock and commodity gambling still remains unmolested at the very center of our business world. Aside from legitimate industry are numerous swindles and gambling schemes. The forging of deeds and mortgages, the high pressure selling of worthless stocks and bonds, the fraudulent procurement of contracts of every sort and in every line of business, the embezzlement of trust funds, the "numbers" racket, stock gambling, and stock swindling and the like enable thieving parasites to levy upon the people very heavy tribute to crime and dishonesty. It would be a wonderful benefaction to mankind if some honest philanthropist should endow a professorial chair in *Criminal Contracts* at one of the too many law schools in our fair but sorry land.

Fraudulent contracts in the Stock Exchange (as also in the commodity exchanges) may be classed either as gambling contracts or swindling contracts. Resting our observations on the sound, simple doctrine of honest and fair dealing, we may safely say the *bona fide* purchase and sale of corporate stock, providing accommodations for which is the prime and only legitimate function of the Stock Exchange, is not a swindling or a gambling operation. It is only when operations in the Exchange depart from this purpose that dubious questions arise. What are some of these dubious questions?

It stands to reason that if a simple transaction of purchase and sale of stocks or grain or furniture or automobiles or anything else is on the square, it is not

a difficult thing for the average man to understand. The difficulty that the average man has in understanding stock and commodity market practice, and the reason that many dubious questions have arisen in connection therewith, is that most of the transactions on the stock and commodity exchanges are not on the square, but are fake and fictitious—deviations from the straight path of honest, straight-forward dealing.

Not many American citizens understand what is meant by the terms "Short Sales," "Wash Sales," "Puts and Calls," "Bull Pools," "Bear Pools," "Bob-tailed Pools," "Sucker Pools," "Blind Pool," "Pegging the Market," "Ballooning the Stock," "Bucketshop," "Cats and Dogs," "Lambs," "Margin Trading," "Manipulation," "Privileges," "Spreads," "Straddles," "Rigged Market," "Run-in the Shorts," Running to Cover," "Sellers' Option," "Buyers' Option," "Taking Profits," "Paper Profits," "Insiders," "Tipster Sheet," "Unloading on the Public," "Making a Killing," "Taking a Flyer," "Strong Hands," "Weak Hands," "Welsher," "When, As and If Issued Sales," "Playing the Market." Most of this is meaningless jargon to the average man who is familiar only with straight-forward business negotiations of purchase and sale.

It would serve no useful purpose at this point to attempt to inform the public of the meaning of these gangster terms, but, if desired, they may be found in the glossary. Of course, stock and commodity brokers consider them very elegant and meaningful words. But that is all a matter of point of view. By means of effective propaganda and clever sophistry the Wall

Street point of view seems to have been accepted generally throughout the country, even if its vocabulary has not yet been fully mastered.

Until the advent of the New Deal, the stock market operations in Wall Street went unchecked by governmental supervision or restraint. Since the amazing disclosures that have recently been made by testimony given before the Senate Committee on Banking and Currency, the Congress has enacted two Bills intended to exercise supervision over the stock exchanges of the country, namely, the Securities Act of 1933 and the Securities Exchange Act of 1934. The first Act is intended to "provide full and fair disclosure of the character of securities sold in interstate and foreign commerce and through the mails, and to prevent frauds in the sale thereof." The Securities Exchange Act of 1934 is intended to "provide for the regulation of securities exchanges and of over-the-counter markets operating in interstate and foreign commerce and through the mails, to prevent inequitable and unfair practices on such exchanges and markets." The administration of the Securities Act of 1933 was at first committed to the Federal Trade Commission, but the administration of both Acts is now committed to the Securities and Exchange Commission which was created by the Securities Exchange Act of 1934.

Neither Act purports directly to restrain gambling operations on stock exchanges. The chief functions of the Securities and Exchange Commission are to make and promulgate rules and regulations calculated to restrain manipulation of market prices, to prevent

fraud and swindling, and to make studies of facts pertaining to the operation of stock exchanges and report its finding to the Congress. Four specific studies have been assigned to the Commission, as follows:

1. The feasibility and advisability of the complete segregation of the functions of dealer and broker;
2. Trading in unlisted securities upon exchanges;
3. Rules of national securities exchanges with respect to the classification of members, the method of election of officers and committees to insure a fair representation of the membership, and the suspension, expulsion, and disciplining of members of such exchanges; and
4. The work, activities, personnel, and functions of protective and reorganization committees in connection with the reorganization, re-adjustment, rehabilitation, liquidation, or consolidations of persons and properties.

Considering the fact that no effort has ever before been made by the government to check up on the operations of stock exchanges, a promising start has been made in the right direction.

Meanwhile, what of our paper civilization? What of the magic paper tricks by which men live in Wall Street and certain points West—conjured up in the sumptuous offices of shyster "leaders of the bar?"

First, there is the sinister amendment of the Bucket-shop Act in the several States purporting to validate and legalize all transactions, whether *bona fide* or not, provided they are conducted on the floor of "legiti-

mate" stock and commodity exchanges and boards of trade. Second, there is the "iron-clad" rule of the exchanges and of the boards of trade to the effect that all sales and purchases shall be made in contemplation of delivery—a rule which, in practice, is binding neither upon customers nor brokers. Third, there is the rule of the stock exchange to the effect that "delivery" of stock shall be made by the "seller" not later than 2:15 p.m. of the second business day following the sale, resulting in the inconvenience to gambling brokers of "borrowing" stock in order to comply with the rule and then later returning the "borrowed" stock, as if nothing had ever happened at all, except the taking of winnings by the short seller as the market price declines. And, fourth, there is the last extremity of the arbitration award made by an arbitration board of fellow gamblers, so that an unenforceable gambling debt may be brought into court under the guise of an adjudicated award of arbitrators. And all of these are fraudulent subterfuges and deceitful artifices, devised by "clever" lawyers to fool the courts and to cheat and defraud the public! A civilization based on scrap-paper, like that, cannot endure.

To cap the climax, some "clever" lawyer has evidently "pulled a fast one" at the last regular session, in 1935, of the General Assembly of the State of Illinois. The gambling brokers, in 1913, tried the same trick. It worked on the General Assembly, but it did not work on the Illinois Supreme Court. They have tried the same trick again, in 1935, hoping that this time they would have better luck in the courts.

Section 132 of the Criminal Code of Illinois provides for the recovery by the loser of gambling losses from the winner. The gambling brokers have never liked that law. They caused it to be amended by the General Assembly, in 1913, by adding the following words:

> No person who accepts from another person for transmission, and transmits, either in his own name, or in the name of such other person, any order for any transaction to be made upon, or who executes any order given to him by another person on, any regular board of trade or commercial or stock exchange, shall, under any circumstances, be deemed a "winner" of any moneys lost by such other person in or through any such transactions.

In 1916, in the case of *Miller v. Sincere,* 273 Ill. 194, 112 N. E. 664, the Illinois Supreme Court held that that amendment of section 132 of the Criminal Code was invalid and void, being an unconstitutional attempt on the part of the General Assembly to grant *a special privilege or immunity* to brokers, as a privileged class, in violation of certain provisions of section 22 of article 4 of the Illinois Constitution. We have already quoted an excerpt from that opinion in Chapter IX.

Every lawyer in the State of Illinois, who has ever made any study of the subject, knows that that 1913 amendment to section 132 of the Criminal Code, attempting to grant to brokers a special privilege and an immunity from the penalty of having to pay back gambling losses to losers who sue to recover, was and is void and of no effect. The "clever" lawyer who prepared the Bill for the enactment of this 1935 amend-

ment copied the unconstitutional amendment of 1913 *word for word.* If he did not know that his Bill had already been declared unconstitutional by the highest court in the State, he was guilty of inexcusable ignorance. If he did know that it had been declared unconstitutional, as an attempt to create a privileged class, immune from the operation of the Criminal Code, the reader will draw his own conclusion as to the ethics of such conduct.

It will be noted that this alleged amendment to section 132 of the Criminal Code was not in the nature of a re-definition of the crime of gambling. It was just a brazen attempt to procure the General Assembly to write into the statute book an exemption of gambling brokers, as a privileged class, from the operation of the criminal law with reference to the recovery of gambling losses. If we may assume that this unknown, "clever" lawyer was possessed of average skill, intelligence and understanding, then it would appear that one must conclude that he deliberately attempted to fake the law for the purpose of deceiving the public, if not the courts. There stands this 1935 amendment, in black and white, on the 1935 edition of the Illinois statutes, purporting to exempt gambling brokers from the operation of the Criminal Code with regard to the recovery by losers of gambling losses, and it is not worth the paper it is printed upon! It will be interesting to observe how the Illinois bar reacts to such a situation!

The chicanery and crookedness and humbug of Wall Street and La Salle Street have permeated the very air we breathe, so much so that it has come to be con-

sidered "clever" to employ professed "ministers of justice" to help us, in bad faith, to swindle our neighbor, and to do it in such a way as to keep us from going to jail! The *mental hazards* which fraudulent paper "contracts" have erected in the minds of most men have made the game fairly safe for swindlers. No wonder crime and gambling have become major problems that threaten the very existence of our modern paper "civilization." And most insidious of all is gambling in the forms of trade—a cancer that has eaten away the vitals of the nation, secreted and unobserved, until it seems now almost too late to hope for recovery to sound and normal health. The time has come when the people of this nation must promptly decide whether to continue to tolerate those who walk the ways of perfidy and bad faith or whether to require that all shall follow the paths of peace, good will and *good faith.*

CHAPTER XII

Conclusions and Suggestions

THERE is dawning gradually in this country an era of social consciousness. Many years ago William Jennings Bryan, in his famous "Cross of Gold" speech, hurled at Organized Greed his defy: "Thou shalt not crucify mankind upon a Cross of Gold." Theodore Roosevelt denounced the Malefactors of Great Wealth. Woodrow Wilson preached The New Freedom. Robert M. LaFollette demanded that Government be Restored to the People. Franklin D. Roosevelt insists that the country shall have a New Deal.

As mercenary criminals in high places have grown bolder and bolder in the commission of an ever-increasing volume of predatory crimes against the people, advocates of social and civic righteousness have arisen in growing numbers to plead for the principle that human rights are more sacred and of greater value than property rights. But the enemies of mankind respect neither the rights of person nor of property. More and more are right-thinking men coming to believe that money should not be the master of men, but their servant; that men were not made for money, but that money was made for men.

As the vision of social and economic justice takes shape, men see larger meaning in the words of Holy Writ. They understand that, in truth, man was created

to have dominion over the earth and the fullness thereof, over the fish of the sea, and over the fowl of the air, and over every living thing that moveth upon the earth; that man should not seek to exercise dominion over his fellow man; that no man should call another man Master, but that all men should be brethren. This is the ideal of democracy toward which the world has been struggling for many thousands of years.

Men have seen the dominion of man gradually increased over the earth and over the fullness thereof, over all material things, until production of goods has so far out-stripped the opportunity for consumption of goods that the people starve because of the very excess of plenty. Man's dominion over things material is right; but man's dominion over his fellow man is wrong. Spiritual growth has failed to keep pace with material growth. A childish fear still binds most men to the worship of Mammon.

There are men standing around, strange as it may seem, unemployed and pleading for a means of livelihood. Meanwhile the means of production of goods stands unused, because of a prior plethora of production, rusting away in idle factories. Stored away and piled high are the goods which men desire but have not the price to purchase. Yet, in this darkest hour, the gleam of the rising sun seems to disclose the coming of a new and better day.

Hope springs eternal in the human heart. Is this newly dawning day but another vain illusion? Or does it mark the beginning of the march of the people into the Promised Land?

The children of Israel looked into and spied out the Land of Plenty, flowing with milk and honey, forty years before they entered in. Why the delay? The plain answer is: Avarice, covetousness, cupidity, greed. They persisted in worshipping the Calf of Gold.

There is no trick form of political government which can deliver the people from oppression by selfish, greedy interests. There is no trick economic or social system that can save the people from distress in the sight of plenty. However scientific a planned economy may be, however perfectly the plans and specifications may be drawn, however attractive the blue prints and maps of the new Utopia may be, Utopia will be a dismal disappointment to the people if its affairs are dishonestly or corruptly administered. A bad form of government, if honestly administered, is preferable to a good form of government dishonestly administered. A sound economic or financial system cannot succeed if its operation is entrusted to the hands of crooks. This is no argument against a planned economy. It is an argument against Man's devotion to Mammon.

There are honest and upright men in this country today, but there are not enough of them. Neither personal piety nor individual honesty on the part of a few men can, in the end, save the nation. There must be *national* honesty. Sodom was destroyed because so few just men could be found therein. Among the children of Israel there were, in the wilderness, many men who did not worship the Calf of Gold, but there were not enough of them. *None* could enter into the Promised Land until the worship of

Mammon had been banished from among the people. Let the "rugged individualist" ponder that fact well! There is hope for the salvation of the people from oppression and greed, but not while the people are indifferent to the requirement of social as well as individual justice. There is no method of exalting a nation and saving its people from despair other than the *general* practice of uprightness. No device or contrivance, no system or scheme, has yet or ever will be devised successfully to short-cut to the saving of the nations ("gentiles").

Today the gambling gangsters (all gangsters are gamblers) have far more influence in swinging elections than do honest voters. Today the gambling bankers and brokers (it is the bankers and brokers who gamble of whom we speak) have far more influence in directing the affairs and the lives of the people than do the people who stand for social and civic righteousness. Today the "leaders" at the bar seem to be more concerned with selling themselves to crooked finance than they are with serving the public good. Each profession looks askance at the other. All professions and callings seem to be indifferent to every consideration except that of money-grabbing. The fact that in our land there are some honest, public-spirited citizens is but the exception that proves the rule here stated.

There was a time when men considered that the war against oppression and exploitation was a conflict between employer and employee. Men are now beginning to understand that, in our modern complex state of society, the employer is not always his own boss. The

employer is beholden to his local banker, the local banker is beholden to the big city banker, and the big city banker is beholden to the Wall Street and the LaSalle Street bankers who have a partnership share with the brokers in the criminal profits and winnings derived from "playing the market" from the inside—the "take" of enormous sums from the public. The plain remedy for almost all of the ills in this country is to limit the stock and commodity exchanges and boards of trade to the transaction of straight-forward, *bona fide* buying and selling—which is the only legitimate function of any market. If that were done, the chains that bind the people in financial bondage would be broken, and the power of finance would be reduced to its legitimate proportions. In such a situation, the bankers, too, would serve their proper purpose. Instead of pouring vast sums of money into the maelstrom of frenzied, gambling finance, they would return to the task of furnishing needed capital for the development of honest industry. This suggestion for breaking the power of Wall Street is not offered as a comprehensive plan for a new social order, but its adoption would undoubtedly pave the way for a better day.

In a land of plenty, with a soundly planned economy, honestly administered, men would soon find themselves living in a Paradise on Earth. The advantages to be enjoyed in such a state would far out-value the lost opportunities of getting rich quick by picking each other's pockets. Crime for profit would quickly disappear. In the atmosphere of honesty and good faith, remaining problems would soon be solved. Men would

then, more sincerely than now, understand the ancient truth: *"The love of money is the root of all evil."*

In the solution of the problems of human society, the hands, the heads and the hearts of men must unite. Production of goods must be efficiently undertaken. Clear thinking and plain speaking must be had in meeting the problem of distribution. Things should be called by their correct names. Intelligent men should not speak of gambling as "speculating," nor of speculating as "investing." They should not speak of stealing money as "making" money. And when they speak of a man's worth, they should not think of the size of his bank account; they should think of his social service in promoting human welfare. Men must learn, before they enter into the Promised Land, that outward, material appearance is often misleading. The people should learn to appraise a man's worth by his attitude of good will and good faith—whether, in his heart, he has the desire to help or rather to harm his fellow man; whether his motives are constructive or destructive. So shall be divided the sheep from the goats. This is not only sound religion for those who seek a Home in Heaven, but it is also sound economics for those who seek a Paradise on Earth. And it is probably true that if one does not honestly seek a Paradise on Earth for humankind, he will, more than likely, never find a Home in Heaven.

The "church militant" has all but passed away. The church has for ages sung her songs of war, but the words seem to have lost their meaning. The army seems to have deserted the "Captain of our Salvation." He battled all alone and lost out for awhile because

of the moral depravity and cowardice of a "crooked and perverse generation." What victory might have been won had not the people who heard him gladly been intimidated to desert the Cause! That generation was crooked and perverse. This is worse. There is far greater oppression today because of the greater concentration of wealth. To the theologians of that day Christ was anathema. He denounced the evils of his day in specific terms and in relation to concrete cases, not in terms of general abstraction. With all of the accumulated wisdom and experience of the ages at hand, mankind is more "hard-boiled" today than ever before. Man's greedy inhumanity to man continues to postpone indefinitely the dawning of a better day.

The church *has been* at war—engaged throughout the centuries in internecine strife. The church has battled over theological dogma to the point of utter exhaustion. The church seems now too weary for further strife. Church members, in large numbers, have given themselves as hostages in pledge of devotion to the Calf of Gold. The church seems now to wish not to fight. The church seems to crave peace at any price. The church does not seem to know that there can be no peace on earth unless and until there is good will and good faith among men.

Does the church know what influences oppose the saving of the *nations?* Apparently not. Does the church know what forces oppose the building of the City of God? Apparently not. Has the church ever made survey of the line of battle? Apparently not. Does the church know, or does the church not care to

know, who are on this side and who on that side of the line of battle? Apparently not. The church seems not to know that there is any battle going on. The powers of darkness seem to have encompassed all.

In previous chapters it has been pointed out that the stock and commodity exchanges and boards of trade are largely used for gambling and for swindling the public on a grand scale. Court decisions have been quoted to prove the point. No one positively knows just what percentage of stock and commodity transactions are gambling and just what percentage are legitimate, *bona fide* purchase and sale. That could be ascertained, however, if access could be had to the brokers' books. But stock and commodity brokers are not giving out any such information except, on occasion, under compulsion of governmental pressure.

Mr. Charles R. Gay, president of the New York Stock Exchange, in a press conference at Chicago, October 17, 1935, stated that New York firms report that from 65 to 80 per cent of the transactions are for cash and are completed by delivery of the certificates. He did not say which New York firms or how many New York firms so reported, nor did he say to whom, whether to the customers or to the brokers, the certificates of stock were delivered. Mr. Gay's statement to the press was obviously a self-serving statement, to be taken with a large grain of salt. It is quite possible that some New York brokerage houses do a fairly legitimate business, but it is very easy to believe, in the absence of official figures to the contrary, that many

New York brokerage houses do practically nothing but a bucketing business. Until government figures on the subject are available, people will continue to believe that gambling flourishes in the New York Stock Exchange and in other stock exchanges throughout the land. Certainly the Chicago Board of Trade cannot be thought of by informed citizens other than as an enormous gambling house. In the "futures" market there is nothing but gambling. And that constitutes the great bulk of the business of the Chicago Board of Trade. It is seldom that "futures" contracts are converted into *bona fide* purchase and sale. In the exchanges and boards of trade many other forms of gambling are conducted "on the side." There pervades a thick atmosphere of gambling. The brokers think like gamblers and talk like gamblers and act like gamblers. What prize fight, what local foot ball or base ball game, is ever held when citizens cannot place bets with the brokers?

"Contract houses" and "futures commission merchants" in LaSalle Street deal only in "futures contracts"—gambling contracts. It must be poetic license that permits futures commission merchants to speak of themselves as "merchants," for they do no merchandising. Of the proposed policing of their business operations by the Federal Government more will be said later.

As stated before (Ch. VIII), the Chicago Board of Trade accounts for 87 per cent of all grain futures trading done in the United States. Approximately 95 per cent of the "trading" done on the Chi-

cago Board of Trade is in "futures." The record shows that the average annual volume of trading in wheat futures on all exchanges and boards of trade in the United States during the past fourteen years was 12,776,716,000 bushels. That is 15 times the average annual production of wheat during the same 14-year period. On July 20, 1933, sales of wheat futures on the Chicago Board of Trade alone aggregated 163,099,000 bushels. That is about four times as much wheat as was actually received at Chicago during the entire year. The price on that day (July 20, 1933) declined 14⅞ cents per bushel. In the 1925 Chicago May wheat futures market, there was a price range, due to uncontrolled "speculation," of 86¼ cents per bushel. Between December 3, 1924, and January 28, 1925, after the farmer had marketed his crop, "speculators" ran the price of wheat up from $1.60 per bushel to over $2.05 per bushel, and by April 3 they ran it back down again to $1.36½ per bushel, or a loss of nearly 70 cents per bushel in 54 trading days. On the 13th of March, 1925, the price broke 14¾ cents per bushel and on the 17th of March it broke 11½ cents per bushel. Over a period of thirteen years, from 1922 to 1934, the average difference between the high and the low price of each of the Chicago May wheat futures for those years was 42¼ cents per bushel.

In a radio address by Mr. Bernard Rothwell, of Boston, president of Bay State Milling Company, Winona, Minnesota, which was published on July 13, 1932, in the *Northwestern Miller,* Mr. Rothwell stated that "a recent report to the Millers National Federa-

tion showed that, of 122,000,000 bushels in hands of millers, less than 25 per cent was hedged in future trading markets.

Among other things, Mr. Rothwell said:

> During the brief three and three-quarter hours daily session of the Chicago Board of Trade, wheat has often swung rapidly back and forth, back and forth, 3c, 5c, 10c and, in one session, 14c bushel, making it impossible for the farmer, the country grain buyer, the miller, or the exporter, to tell within several cents per bushel the price of wheat at any particular moment. . . .
>
> The difficulty of transacting legitimate business—production, manufacture or distribution—in face of such wide fluctuations, the risks involved and the actual losses liable to be sustained are self-evident.
>
> There is no legitimate demand for actual wheat 6, 8 or 10 months ahead. It is obvious that no human being can form any judgment whatever as to conditions affecting prices so far in advance. This is shown by the wide range in price during the life of the "future." . . .
>
> The small cost of marketing grain from farm to buyer in terminal markets is often cited as evidence of the economy of the present marketing system; but such advantage is largely, if not wholly, offset by the constant fluctuations in price in such markets, which make uncertain the net price received by the shipper, that price being so much under or so much over that of the active "future" at the moment.
>
> These daily fluctuations are not caused by the pressure of actual grain arriving from day to day, but by the operations of huge scale, politely called, speculators, more bluntly described as gamblers.

"Speculative trading" in cotton is much the same as in wheat. During 16 years, 1916 to 1932, the average

annual trade in cotton futures was 121,983,547 bales, or more than ten times the average production per annum. It is not many months ago that cotton prices broke 200 points in one day. Thus it can be seen what important economic and social services these contract houses, these futures commission merchants, these gambling grain and cotton brokers render to the country!

It is related that a clergyman in one of the Mid-West States, desiring to "make some easy money," spoke of his desire to a member of his congregation, a grain broker. The broker was delighted to help his pastor. He told him to play the wheat "futures market." He explained to him that all he needed to do was to put up a small sum of money as "margin" on the purchase of wheat futures. If he should do this, he would be sure to make some easy money almost overnight. But the preacher was perplexed. He said he did not wish to buy any wheat. So the broker explained to him the difference between "wheat" and "a wheat futures contract," and he assured him that he would not be required to take delivery of any wheat. At that the pastor felt much better satisfied and he told the broker that he would follow his advice if he would put that down in writing about not being required to take delivery. And the broker gave him the writing.

The pastor played the market with indifferent success. Presently he began to lose consistently. The broker sued him for unpaid commissions. The pastor's lawyer argued to the court that the claim was a gambling debt,

uncollectible in the courts. And the pastor won his case.

It is, therefore, a risky matter for a broker to go into court to attempt to collect from a welshing customer his claim for commissions on "futures" purchases and sales. Yet these gambling brokers often take a chance of that sort. In previous chapters it has been pointed out how the courts are disposed to look upon such transactions. Here is a particularly vigorous opinion of the Supreme Court of Illinois—the case of *Cothran v. Ellis,* 125 Ill. 496, 16 N. E. 646:

> It is not only contrary to public policy, but it is a crime—a crime against the State, a crime against the general welfare and happiness of the people, a crime against religion and morality, and a crime against all legitimate trade and business. This species of gambling has become emphatically and pre-eminently the national sin. In its proportions and extent it is immeasurable. In its pernicious and ruinous consequences it is simply appalling. Clothed with respectability, and entrenched behind wealth and power, it submits to no restraint and defies alike the laws of God and man. With despotic power it levies tribute upon all trades and professions. Its votaries and patrons are recruited from every class of society. Through its instrumentality the laws of supply and demand have been reversed, and the market is ruled by the amount of money its manipulators can bring to bear upon it. These considerations imperatively demand at the hands of the courts of the country a faithful and rigid enforcement of the laws which have been ordained for the suppression of this gigantic evil and blighting curse.

Since this manuscript was first prepared, the Supreme Court of North Dakota has handed down an

important decision on this matter in the case of *Becher-Barret-Lockerby v. Sjothun,* 262 N. W. 691.

Not only is it the well established practice in the Chicago Board of Trade that delivery of grain is not ordinarily made or taken under "futures contracts," but the rules, regulations and practices of the Chicago Board of Trade make it practically impossible to make or to take delivery of merchantable grain. Why should broker members of the Chicago Board of Trade bother to handle actual grain when they can make much more money by "playing the market" and by inciting and luring others who have no legitimate business in the grain market also to "play the market"? The fact is that less than 1 per cent of the volume of "futures trading" in wheat and corn on the Chicago Board of Trade results in delivery, and that approximately 95 per cent of the "trading" done on the Chicago Board of Trade is in "futures." Further facts evidence that the whole set-up of the Chicago Board of Trade is such that it discourages the making or taking of delivery under "futures contracts."

In the first place, as to *taking* delivery, whereas in the "cash" market the purchaser of wheat or other grain may specify in his order and receive in actual delivery such kind and grade as he may desire, the purchaser of a "futures contract," if he must take delivery at all, must ordinarily take a "skin grade" of the least valuable kind of grain he has ordered. The buyer in the "cash" market may pick his grain; the buyer in the "futures market" may not. In the "futures market" of

the Chicago Board of Trade the following kinds and grades of wheat are "deliverable at the contract price," in theory, at least:

No. 1 Hard Winter Wheat
*No. 2 Hard Winter Wheat
No. 1 Yellow Hard Winter Wheat
No. 2 Yellow Hard Winter Wheat
No. 1 Red Winter Wheat
*No. 2 Red Winter Wheat
No. 1 Northern Spring Wheat
No. 1 Heavy Northern Spring Wheat

But the purchaser of a "May wheat futures contract," if his contract should not be closed out and he must take delivery, does not know and has no way of knowing what kind or grade of wheat he will be required to take. He may be reasonably sure that it will be a "skin grade" of the least valuable kind of wheat that is available in the warehouse and "deliverable at the futures contract price." Those kinds and grades of wheat marked in the above list with an asterisk are generally understood as "basic."[1] The Chicago Board of Trade Clearing House, not the purchaser in the "futures market," decides what kind and grade of wheat shall be delivered. The short seller, or his broker, determines originally what sort of grain is to be delivered. The Clearing House then passes on the matter. In fact, the "futures contract" does not specify any kind or grade of wheat—simply, let us say, "May wheat futures." It is understood that the purchaser will likely

[1] *Grades of Grain Deliverable on Contracts for Future Delivery*, compiled by the Grain Futures Administration, U. S. Department of Agriculture, Chicago, Illinois, pages (d) and 1.

have to take a "skin grade" of No. 2 Red Winter Wheat or a "skin grade" of No. 2 Hard Winter Wheat. It is not at all likely that he will receive any grade No. 1 wheat. No. 1 wheat was obviously put in the list as window-dressing or camouflage. Of course, if there is no No. 2 wheat actually available for delivery, he may receive No. 1 wheat. In fact, he may be forced to take delivery of No. 1 Dark Hard Winter Wheat and to pay a premium of 1½c per bushel above his contract price. Or he may be forced to take delivery of No. 1 Dark Northern Spring Wheat or No. 1 Heavy Dark Northern Spring Wheat and to pay a premium of 1c per bushel above his contract price. Or he may be forced to take delivery of No. 2 Dark Hard Winter Wheat and to pay a premium of ½c per bushel above his contract price. (It should be remembered that, in the "futures market," the seller is always a "short seller.")

What is a "skin grade" of wheat? The warehouseman who makes delivery of, let us say, No. 2 Red Winter Wheat to fill a "futures contract" does not deliver the same sort of No. 2 Red Winter Wheat that he would be required to deliver in the "cash" market. He mixes No. 3 with No. 2 to such degree that the admixture can barely, "by the skin of the teeth," be graded, under U. S. standards, as No. 2. It is very close to the line between No. 2 and No. 3. In any case, it is not such merchantable wheat as the miller would buy for milling into flour, which is the main outlet for wheat. If and when millers "play the futures market," they do not do so with the idea of taking delivery. Neither do butchers, bakers nor candlestick-makers buy

"wheat futures" with the idea of taking delivery of any sort of wheat at all.

The U. S. Department of Agriculture, Bureau of Agricultural Economics, has published a *Handbook of Official Grain Standards of the United States*. On page 1 it is set forth that

> Wheat shall be any grain which, before the removal of dockage, consists of 50 per cent or more of wheat and not more than 10 per cent of other grains for which standards have been established under the provisions of the United States Grain Standards Act, and which, after the removal of dockage, contains not more than 50 per cent of broken kernels of grain of any size. The term wheat in these standards shall not include emmer, spelt, einkorn, Polish wheat, and poulard wheat.

Wheat is divided into seven classes:

Class I, Hard Red Spring Wheat
Class II, Durum Wheat
Class III, Red Durum Wheat
Class IV, Hard Red Winter Wheat
Class V, Soft Red Winter Wheat
Class VI, White Wheat
Class VII, Mixed Wheat

Hard Red Spring Wheat, for example, shall include all varieties of hard red spring wheat, and may include not more than 10 per cent of wheats of other classes. There are three sub-classes: (A) Dark Northern Spring, (B) Northern Spring, and (C) Red Spring. As to sub-class (B), Northern Spring Wheat, it is required that:

> This sub-class shall include wheat of the class Hard Red Spring Wheat consisting of more than 25 per cent but less than 75 per cent of dark, hard, and vitreous kernels. This sub-class shall not include more than 10 per cent of wheat of the variety of Humpback.

There are, in addition to what is called "sample grade," six grades of Class I, Hard Red Spring Wheat. They are as follows: 1 Heavy, 1, 2, 3, 4, and 5. Sub-classes (A), (B), and (C) are subject to the following "grade requirements":

Minimum test weight per bushel: 1 Heavy, 60 lbs.; 1, 58 lbs.; 2, 57 lbs.; 3, 55 lbs.; 4, 53 lbs.; 5, 50 lbs.

Damaged kernels (wheat and other grains, heat-damage, etc.): 1 Heavy, 2 per cent; 1, 2 per cent; 2, 4 per cent; 3, 7 per cent; 4, 10 per cent; 5, 15 per cent.

Foreign material: 1 Heavy, 1 per cent; 1, 1 per cent; 2, 2 per cent; 3, 3 per cent; 4, 5 per cent; 5, 7 per cent; total.

Wheats of other classes: 1 Heavy, 5 per cent; 1, 5 per cent; 2, 10 per cent; 3, 10 per cent; 4, 10 per cent; 5, 10 per cent.

It will thus be seen that a miller who buys wheat for his particular trade will require a fairly uniform standard of wheat. A miller who manufactures and advertises a particular quality of flour can use only a uniform grade and class of wheat. He would ruin his trade if he should attempt to take delivery of wheat under a "wheat futures contract" and get only a "skin grade" of No. 2. The manufacture of a flour for baking crackers is quite a different thing from the manufacture of

flour for baking pastry. Milling machinery, it may further be said, that is adapted to milling soft wheat is not adapted to milling hard wheat. To one who knows anything at all about the milling business it must appear ridiculous to think of a miller taking delivery of wheat under a "futures contract." If a miller should buy a "wheat futures contract," it would be for the purpose of hedging, not for the purpose of taking delivery.

As to the matter of taking delivery of corn under a "futures contract," one might possibly be required to take a mixture containing up to 25 per cent of Argentine corn. Such a mixture of dent or flint corn (maize) with Argentine corn would be of no use whatever to any processer. It would be good for chicken feed only. A processer of grains, wheat or corn, requires for his trade a particular class and grade, and he can get what he wants only by going into the "cash" market.

It may be proper, at this point, to state more explicitly just what is meant by taking or making delivery in fulfilment of a "futures contract." In the mind of the broker, "delivery" means one thing; within the intent of the law, it means something else. There are four so-called "delivery months" in the year—May, July, September and December. The catch in the arrangement is, however, that there are but three "delivery days" in each of those four months, making a total of twelve "delivery days" in the year. No "futures trading" may be done on any of those "delivery days"—the last three business days in each "delivery month." All the rest of the year, except for those twelve days, is devoted to gambling in the "futures market."

There are, in the "futures market," three methods of "delivery." First, by setting off a purchaser's "futures contract" with a short seller's "futures contract," each cancelling the other, and settling in cash on the basis of "price differences." This is simply gambling on the fluctuation of the quoted market prices, and constitutes the vast bulk of the "futures trading." Second, by delivery of warehouse receipts under which the buyer must take what is offered to him—usually a "skin grade" of grain. This method is very seldom used. Third, by delivering actual wheat in carload lots. Deliveries by the first and second methods, above described, may be made at any time, at the option of the short seller, during "delivery month." But deliveries by the third method may be made only on one of the three "delivery days" of "delivery month." This method is practically never used. With very great difficulty, it is once in a long while used when there is a "squeeze" on, as we shall presently see.

The "futures contract" is a convertible contract. It may, at the option of the short seller, be closed out by settlement of price differences or by delivery of warehouse receipts or the short seller may, if caught in a "squeeze," buy carload lots from a producer or from a country elevator (provided carload lots are available within the limit of the three "delivery days") and deliver the actual grain to fulfil his "short" contract. But when the short seller delivers actual grain, he steps out, by that very fact, from the "futures market" into the "cash" (merchandise) market.

It is a misnomer to speak of buying wheat, or other

commodity, on the Chicago Board of Trade, "for future delivery." If one should wish to purchase for future delivery, he would not go into the "futures market" but into the "cash" market and order the exact variety and grade of wheat, or other commodity, "to arrive" at a stipulated time, intending, in good faith, to take delivery and to pay the purchase price of the thing he has ordered. That is a very different matter from buying a "futures contract," then settling by payment only of "price differences." What one buys in a "futures market" is a *chance* on the rise or fall of the quoted market price. It is a "futures" *risk* that he buys; *not a future delivery.*

These complicated rules of the "futures market" are but part of a deep, dark gambling game. No one can seriously contend that the "futures market" is anything but a gambling game. Some persons are inclined to believe that the small fraction of hedging transactions in the "futures market" may be regarded as legitimate. But even the hedger has no thought of making or of taking delivery.

In passing, it may be well to note the effect of "futures" prices on "cash" prices. One who buys a "May wheat futures contract," let us say, knows that, if he takes delivery, he will receive, in all probability, only the "skin grade" of No. 2 Red Winter Wheat. The price he bids for that sort of wheat is not apt to be as high as the price he would be willing to pay for, let us say, No. 1 Red Winter Wheat, in the "cash" market. But that is the basic price. The May wheat futures, at this writing, are quoted at 96c per bushel. To this

"futures" price one would probably be willing to add about 15c per bushel for No. 1 Red Winter Wheat, in the "cash" market; that is, $1.11 per bushel for merchantable wheat, fit for milling into flour. Some authorities say that the differential should be 3c rather than 15c. But there is no fixed rule. It follows that, in the absence of manipulation and in the absence of a "squeeze" in the "futures market," the tendency of the "futures" quotations is ordinarily to depress the price of "cash" wheat.

In the second place, as to *making* delivery, a wheat producer or local elevator man, on the other hand, finds great difficulty in delivering wheat to fill "futures contracts." Ordinarily, of course, wheat growers and elevator men sell their wheat in the "cash" market, not in the "futures market." They make shipment of "cash" orders *"to arrive."* Sometimes there is a "squeeze" in the "futures market." That is, certain "speculative" interests have "run a corner" on wheat, have bought "futures contracts" which cannot readily be filled by delivery of actual wheat, have run up the "futures" quotations, and have placed the "short sellers" at their mercy. In order to avoid utter ruin, the "short sellers" find it necessary to scurry around and find some wheat for sale at reasonable prices with which to make delivery on their "futures contracts," and thus to break the "corner."

The "squeeze" is a particularly dangerous situation, especially in the Chicago Board of Trade where the "cash" market is small and the "futures market" large. It will be remembered that the annual receipts of actual

wheat at Minneapolis, Duluth, Kansas City, St. Louis, Omaha, and Hutchinson exceed those at Chicago.

When there is a "squeeze" on in Chicago, the problem then is how the producer and the local country elevator may manage to make delivery promptly of actual wheat in Chicago and take advantage of the high price then prevailing, for the moment, in the "futures market." Ordinarily they make delivery for sale in the "cash" market. But if a "squeeze price" is quoted on "May wheat futures," how can the producer or the country elevator man get his wheat into Chicago and make delivery from a "regular" warehouse on one of the last three business days of May? It is quite a problem. Taking delivery is, as we have seen, quite a problem. So also is making delivery under "futures contracts." The Chicago Board of Trade will not permit delivery from cars on track, even during the last three business days of the month, without special permission, unless all of the "regular" warehouse space is full. There is the problem of transporting the wheat to Chicago quickly. There is the problem of having the shipment inspected and graded quickly. There is the problem of storing the wheat in a "regular" warehouse quickly. Railroads ordinarily move wheat more slowly than they move fruit or vegetables or other perishable commodities. So it is practically impossible for producers and country elevator men to get their wheat into Chicago, have it inspected and stored, and be prepared to fill "futures contracts" within those three "delivery days," even though the "squeeze demand" be very great and the "squeeze price" be very attractive.

It has happened, on one occasion, when a "squeeze" was on, that a group of country elevator men chartered a freight train to run their wheat into Chicago on passenger schedule. Thus, by paying the railroad a premium of $1,800, and by having their shipment inspected en route, they were able to make delivery within the three-day time limit and take advantage of the "squeeze price." But that does not happen very often.

If the Chicago Board of Trade were really anxious to avoid the "squeeze" and its dire consequences, it could easily do so without being under necessity of giving up its lucrative "futures market." Here is a suggestion. When a "squeeze" is on, let delivery be made at any recognized public elevator point—at Burlington, or at Wichita, or at St. Louis, for example. Let the transportation charge from such point to Chicago be deducted from the "squeeze price" at Chicago. If a "speculator" who has run a "squeeze" must take delivery, there is no good reason why he should not take delivery at any recognized public elevator or warehouse outside of Chicago, on one of the three "delivery days," and then ship the wheat wherever he wishes whenever he wishes. Thus the gambling could go on as usual, and the "squeeze" would be eliminated.

In the third place, illustrating further the difficulty of making delivery in the "futures market," rule 282 of the *Rules and Regulations of the Board of Trade of the City of Chicago* reads, in part, as follows:

282. GRAIN IN CARS—During the last three business days in the month regular deliveries of contract grades of grain on contracts for future delivery may be made in cars on track subject to the following:

(a) Cars must be within the Chicago District, in a railroad yard, where samples are taken by the Illinois State Grain Inspection Department.

(b) Cars must be consigned or ordered to a regular warehouse unless all regular storage space is filled or otherwise unobtainable.

There are seven more qualifying provisions of this rule, the last of which is further subdivided.

In this country there are many co-operative farm organizations and co-operative grain elevators. There is also in Chicago a co-operative terminal elevator or warehouse. But co-operating wheat growers may not ship their wheat for delivery to their own co-operative warehouse in Chicago, even during the last three business days of "delivery month." This warehouse, before it became the property of the farmers' co-operative societies, was designated by the Chicago Board of Trade as a "regular" warehouse. Since the co-operative societies have acquired ownership of this warehouse, the Chicago Board of Trade has declared it to be an "irregular" warehouse, in which grain may not be stored for delivery in Chicago. That is, the Chicago Board of Trade refuses to recognize its warehouse receipts. This co-operative warehouse is licensed by the Federal government and is inspected frequently by Federal inspectors. The supervision of this co-operative warehouse, under Federal law, is much more strict than is the supervision of what the Chicago Board of Trade pleases to

designate as "regular" warehouses. The Chicago Board of Trade insists that warehouses designated by it as "regular" shall be under the exclusive supervision of the Illinois inspectors. Yet, the fact is that all Illinois inspectors are required to have a Federal license. Each Illinois inspector is also a Federal inspector. The difference is that under Illinois law only an initial inspection of a shipment is made, that is, at the time it is received at the warehouse. Under Federal law, on the other hand, each shipment of grain is frequently inspected, not only at the time delivery is made to the warehouse but also at frequent intervals while it is in storage. The Chicago Board of Trade evidently does not wish to be bothered or hampered by such frequent inspections. All of the State inspectors have access to this co-operative warehouse by reason of their Federal license. That is, this co-operative warehouse is open at all times to inspection by both Federal and State inspectors. There is not an inspector in the State who lacks the legal right to enter and inspect this co-operative warehouse at any time. Yet the Chicago Board of Trade calls this co-operative warehouse "irregular."

Naturally enough, the Chicago Board of Trade recognizes itself, and always has recognized itself, as the bitter enemy of farmers' co-operative grain marketing associations. If ever the farmers should get together into a powerful co-operative society, able to control the grain marketing of the country, which is soon likely to be the fact, the grain producers would be able to cut out of the picture an innumerable army of middlemen and gambling grain brokers, together with

a vast horde of gambling "futures commission merchants," and would be able to market their grain more directly to the consumer and to avoid the risks and uncertainties of fluctuating, "speculative" market prices. In Canada, co-operative marketing of grain has reached a high state of development, and the "futures market" is rapidly fading out of the picture. At times when the Canadian Wheat Board has marketed Canadian wheat there has been no "futures market" at all.[2] Neither was there much of a "futures market" in this country at the time when we were involved in the World War, when minimum prices of wheat were fixed by the government. The wheat "speculators" were forced to step aside, to a considerable extent, when the nation was in peril. The nation is in peril now. These gambling "speculators" will soon be forced out of the picture again, to stay out for all time to come. These parasites that feed on the grain trade are not only a "burden upon interstate commerce in grain and the products and by-products thereof," as declared by the Grain Futures Act of 1922, but are also a burden upon the entire producing and consuming public. These gamblers in the necessities of life have contributed much, in more ways than one, to the distress and the starvation of the people.

Many people seem to regard gambling as a matter of minor consequence, to be taken for granted, as a fact of human nature. The fact that gambling grows increasingly more prevalent seems to them strong proof

[2]Harald S. Patton. *Grain Growers Co-operation in Western Canada*, p. 278.

that "life is a gamble; everything is a gamble." There seems to them to be nothing to become excited about when gambling pervades everywhere. But if one attempts to point out the evils of gambling and to argue that gambling should be suppressed, then they become greatly excited and loudly defend the right of men to gamble. What the statutes say and what the courts say on the subject does not seem to count.

People generally may be divided into four groups as to their positions on the subject of gambling. First, there is the large group that believes in all forms of gambling. Second, there is the small group that opposes all forms of gambling. Third, there is the group that opposes stock and commodity gambling, but does not oppose other forms of gambling. Fourth, there is the group that bases its position as to gambling in its several forms on the idea of expediency.

Those of this last group reason thus: Gambling is not harmful (1) unless the stakes are higher than one can afford to lose; (2) unless fraud is practiced in connection with the game; (3) unless one forms a habit of gambling which he cannot break; or, (4) unless, by gambling oneself, one entices others to gamble to excess. Starting out with the belief that gambling, in and of itself, is not wrong, one easily passes from one form of gambling to another. If it is not wrong to gamble at poker or at the races, then it is not wrong to gamble on the stock or commodity markets. Poker players, without compunction of conscience, often take a "flyer in the market." And the "respectability" of the stock gambler and of the commodity gambler lends "respec-

tability" to the frequenter of the gambling joint. In fact, the gambling joint is patronized by men and women from all strata of society. With little or no restraint from the enforcement of the law, and with the organized encouragement of gambling brokers, the volume of gambling grows and increases from day to day. One may well imagine with what satisfaction the president of the New York Stock Exchange and his fellow brokers sit back and smile as the spirit of gambling grows among the people. On the witness stand, before the Senate Committee on Banking and Currency, it was calmly remarked by Richard Whitney, former president of the New York Stock Exchange, in response to a question whether the "bull movement" in 1929 had not precipitated the October debacle on the stock market in that year: "Yes, the bull movement indulged in by 120,000,000 people of the United States."[3]

So long as large numbers of our people view the problem of gambling with indifference, or actually participate in gambling in one form or another, there is little hope for substantial improvement in social and economic conditions in our country. Stock and commodity gambling will completely ruin our country, if persisted in, for the innocent suffer untold privation and distress together with the guilty. The serious question is how one may argue effectively against stock and commodity gambling while so many of our people

[3]Government Printing Office, Washington, D. C.: Stock Exchange Practices—Hearings before the Committee on Banking and Currency of the United States Senate, 72d Congress, First Session, Part I, p. 22.

seem to believe in and practice gambling in one form or another?

Our civilization has actually begun to crumble. The signs of decay are manifest on every hand. If our methods of building society were not based upon the principle of a gambler's chance, if gambling did not so generally prevail and if the spirit of gambling were not so prevalent in all strata of modern society, but if our methods of building society were based upon scientific principles, who could believe that our banking system could become so unsound that all the banks would have to be closed, even for a single day, in order to prevent a complete collapse not only of banking but also of every other line of business activity? Or that our country could come into a condition where half of the population must depend upon charity for subsistence, must remain idle and unemployed in the midst of abundant wealth? Or that our country could come into a condition where violent crime threatens to destroy the government? Or into a condition where crimes of bad faith and breach of trust break down the confidence of the whole people? Or into a condition where multitudes of men and women, having invested their life-savings in "gilt-edge securities," find everything swept away because of unbridled gambling in the stock and commodity exchanges?

Gambling is the mortal enemy of the scientific administration of business affairs. Otherwise, how can one account for the fact that the average life of the average business enterprise in this country is but seven or eight years? Or for the fact that 94 per cent

of all businesses sooner or later suffer financial failure through bankruptcy or insolvency? Statistics show that, during the economic history of this country, the average increase of aggregate wealth has been but 4 per cent per year. If large corporations, through manipulative practices and through gambling operations, and by means of mergers and special governmental privileges, are able to pay fancy salaries and bonuses to their officers and to declare inordinately large dividends to their shareholders, is it to be wondered that smaller concerns live constantly in fear of failure? During the history of this nation there have been at least 25 major economic depressions lasting each one for more than a year. Is any intelligent man able to believe that these oft-recurring depressions are caused by spots upon the sun? Cycles of depression are not just freaks of nature; they are caused by the criminal acts of greedy men in the field of high finance, draining the country dry by all manner of "skin games," swindles and gambling schemes.

Earnest, forward-looking men are striving to formulate plans of social and economic reconstruction. But there is no plan that can withstand the ravages of unscientific, needless risk and waste in business or downright crookedness on a wholesale scale. Before any plan can have hope of successful operation, the undergrowth of risk and uncertainty, due in large part to the prevalence of gambling operations in the forms of trade, must first be cleared away. This cannot be done so long as the average man in the street believes that gambling, at worst, is a mere questionable amusement,

or, as Wall Street contends, an excellent means of acquiring "psychic utility." Forward-looking leaders would do well to give serious consideration to this great problem of commercial gambling. Upon this ground they can, if they believe in the fundamental principle of *quid pro quo,* unite in a common effort, with the strong backing of the courts. Then, absent the miasmic mirage of uncertainty and unreality, they may see aright to build anew.

There is in Wall Street and in LaSalle Street a fixed opinion that one has an inherent right to "trade" in stocks and in commodities for the mere sake of trading, without regard to the question of rendering service to society. The only justification for interfering with the orderly and legitimate marketing of stocks and commodities which a "trader" thinks he needs is the hope of pecuniary profit for himself. He is a parasite upon the market. To his way of thinking, "making money" is an end in itself and a sufficient justification for any means used to attain that end. That is also the philosophy of the gangster and of the myriad types of gamblers.

The chief trouble with this country is that the people have stood back and permitted the big, greedy hogs to get their feet into the trough and destroy the sustenance of all the people. In humble meekness the people have come to conclude that only the predatory powerful may be beatified and inherit the earth, and that they must seek to become predatory and powerful, too. It is time now to take a different view of the matter and to insist that those who are powerful become meek and

considerate of the rights of others, so that all may be happy together.

What is to be done about the matter? President Franklin D. Roosevelt has well said:

> The power of the people once aroused in a fixed purpose is the most irresistible force in the world.

That is what is needed—an aroused people with a fixed purpose to establish justice. The enactment of laws is important, but public opinion takes first place. Lincoln said:

> With public sentiment nothing can fail.
> Without it nothing can succeed.
> Consequently, he who moulds public sentiment goes deeper than he who enacts statutes or pronounces decisions.
> He makes statutes and decisions possible to be executed.

Some people are inclined to say that education is too slow and painful a process to wait upon for the accomplishment of worthy ends in the interest of the general welfare. They are anxious to short-cut to a solution of vexing problems that have grown upon us during ages past. They want some magic legislative wand to effect a cure. They say that relief from oppression is needed now—not 10, 30 or 100 years from now. The efficacy of short-cut methods may well be doubted, but without doubt education can be speeded up. However, here are some legislative proposals for the curbing of stock and commodity gambling, leaving

until the last, that which should come first, namely, a discussion of the problem of moulding public sentiment and opinion by means of adequate educational activities.

It should first be remarked that intelligent, well-informed, fearless city and county prosecutors could suppress gambling, in all its forms, without the enactment of further legislation. The books are full of laws against gambling, and the court reports are full of decisions against gambling. There is no good reason for temporizing longer, except that the prosecutors seem to lack the support of well-informed public opinion. The need for education, not only to procure the enactment of proper legislation but also to see to it that laws are enforced after they have been enacted, is urgent. The enactment of the laws here suggested will doubtless aid greatly in the suppression of all forms of gambling—especially gambling in the forms of trade. These suggestions are not mutually exclusive.

A law should be passed prohibiting newspapers and radio stations from printing or broadcasting any account of any race-track, lottery, or other gambling event.

A law should be passed prohibiting the short selling or margin buying of corporate stock.

A law should be passed prohibiting the short selling or margin buying of "futures contracts" in commodity exchanges or boards of trade.

A law should be passed requiring everyone who gives an exchange broker an order to buy or to sell stocks or commodities to reduce his order to writing and to verify the same with his oath that he intends, in good

faith, to take or to make delivery, as the case may be, of the stocks or commodities so bought or sold.

A law should be passed requiring all stock or commodity exchange brokers and futures commission merchants to be registered by governmental authority and subjecting their operations to strict supervision and regulation.

The details of these proposed laws should, of course, be worked out with great care. If there existed in this country a sufficiently well-informed public opinion on the subject of gambling, the framing and enactment of suitable laws for its complete suppression would quickly be accomplished. The forming of public opinion is of first importance.

A proposed law has, however, been carefully prepared, and it should, without doubt, be passed at the next session of the Congress. That is the Capper-Jones Act (H. R. 6772), commonly known as the Commodities Exchange Bill. This Bill has been before the Congress for two sessions last past. It has passed the House of Representatives both times. In the first session of the 74th Congress the Bill was referred to the Senate Committee on Agriculture and Forestry, and there it remained until the last few days of that session. Had the committee reported it to the Senate sooner, and had it come onto the floor of the Senate for debate, it doubtless would have been passed. It will be on the calendar for the coming session of the Congress, and, if the public demands its passage, it will be enacted into law.

This Bill (H. R. 6772) is intended to strengthen

the Grain Futures Act of 1922. It authorizes the Secretary of Agriculture to register all futures commission merchants and floor brokers in all "contract markets" (commodity exchanges and boards of trade recognized by the government as such). It requires reports to be made by such futures commission merchants and floor brokers on all of their transactions. It seeks to limit, by order of the Commodity Exchange Commission, the volume of "speculation" on contract markets done by individual traders. It seeks to limit the fraudulent practices of members of contract markets by making it unlawful for them

> (A) To cheat or defraud or attempt to cheat or defraud such person [a customer in the futures market];
>
> (B) willfully to make or cause to be made to such person any false report or statement thereof, or willfully to enter or cause to be entered for such person any false record thereof;
>
> (C) willfully to deceive or attempt to deceive such person by any means whatsoever in regard to any such order or contract, or the disposition or execution of any such order or contract, or in regard to any act of agency performed with respect to such order or contract for such person; or
>
> (D) to bucket such order, or to fill such order by an offset against the order or orders of any other person, or willfully and knowingly and without the prior consent of such person to become the buyer in respect to any selling order of such person, or become the seller in respect to any buying order of such person.

The Bill further provides for the enactment of an amendment to the Grain Futures Act of 1922, to be

known as Sec. 4c, making it unlawful for any person to offer to enter into, enter into, or confirm the execution of any futures transactions such as these:

> (A) if such transaction is of the character of, or is commonly known to the trade as, a "wash sale," "cross trade," or "accommodation trade," or is a fictitious sale;
>
> (B) if such transaction is of the character of, or is commonly known to the trade as, a "privilege," "indemnity," "bid," "offer," "put," "call," "advance guaranty," or "decline guaranty," or
>
> (C) if such transaction is used to cause any price to be reported, registered, or recorded which is not a true and bona fide price.

These provisions of the proposed Bill are obviously in the public interest. Its enactment would, of course, work havoc with a large part of the business of the gambling brokers and the futures commission merchants, falsely so called. At the time this Bill was pending before the first session of the 74th Congress, it was freely predicted in LaSalle Street that, if the Bill should pass, large numbers of brokers and futures commission merchants would flee the country to Canada. But Canada can take care of herself when it comes to dealing with such gentry.

Every national Farm organization and every national and regional co-operative association of farmers has supported and has urged the passage of this Bill. The members of the House of Representatives are overwhelmingly in favor of this Bill. The President, the Farm Credit Administration, the Department of

Agriculture, the Department of Justice, and the producers of commodities have been seeking its enactment. But it has failed of passage in the Senate. Extensive hearings were held in the year 1934 and in 1935 before the House Committee on Agriculture. For many years last past testimony has been taken and evidence received before Congressional committees and before the Federal Trade Commission. The testimony and the evidence are all in. The defendant stands accused and convicted before the House of Representatives. But in the Senate someone has silently and without public notice put quietly to death this most meritorious measure. The Chicago Board of Trade must have some very powerful and very influential friends at Washington!

There is another good reason why the Grain Futures Act of 1922 should be amended at the next session of the Congress. On November 25, 1935, in the case of *Arthur W. Cutten v. Henry A. Wallace, Secretary of Agriculture, et al.,* the U. S. Circuit Court of Appeals for the Seventh Circuit handed down a significant decision reversing the order of the Commission directing that all contract markets refuse all trading privileges thereon to Cutten for a period of two years from March 1, 1935. Cutten had been found guilty by the Commission of violating pertinent provisions of the Grain Futures Act of 1922 and had been suspended by the Commission from trading privileges for a period of two years. In reversing and setting aside the order of the Commission, the Circuit Court of Appeals, among other things, said:

(a) Petitioner asserts that the evidence does not support the findings of the commissioners. With this contention, we cannot agree. It would serve no useful purpose to set forth the testimony upon which this conclusion is predicated. It is sufficient to say that the evidence amply supports the findings. It points persuasively to the conclusion that Cutten repeatedly, knowingly, and intentionally, during the deep depression years of 1930 and 1931, when agriculture was waging its losing battle for existence on account of low and ever lower prices, violated and flouted that provision of the rules and regulations promulgated pursuant to the authority of the statute which required him as a dealer to report the fact that he was short more than 500,000 bushels in any one future.

(b) Whether the findings support the order depends upon the construction which we are required to give to section 6 (b) of the Act. The pertinent statutes read as follows:

* * * * * *

"(b) If the Secretary of Agriculture has reason to believe that any person *is violating* any of the provisions of this Act, or *is attempting to manipulate* the market price of any grain in violation of the provisions of section 5 hereof, or of any of the rules or regulations made pursuant to its requirements, he may serve upon such person a complaint stating his charge in that respect. . . . Upon evidence received the said commission may require all contract markets to refuse such person all trading privileges thereon for such period as may be specified in said order." . . .

The court further said:

Respondents argue that although the statute uses the present tense, it should be so construed as to include past transactions. A rather strong and persuasive argument is

made in favor of the wisdom of such a construction without which the power to deal with an offender is almost nil. We are, however, required to construe the statute, —not to pass upon its purposes, but upon its wording.

* * * * * *

It is admittedly rather difficult to understand why Congress would, when dealing with the punishment of a Board, include past as well as present violations, whereas in section 6(b) when dealing with the punishment of the individual trader, it provides for punishment only when such person "is violating" or "is attempting to manipulate the market."

* * * * * *

Under such circumstances it is for Congress to amend its legislation, if it deems it wise and desirable so to do, not for courts to do so by judicial construction.

Obviously, then, the Grain Futures Act of 1922 needs to be strengthened by suitable amendatory legislative enactment of the Congress. It is to be hoped that the Congress will not longer ignore a situation where a big trader may continue to flout the provisions of the rules and regulations promulgated pursuant to the authority of the Act and continue to ignore the orders made by commissioners charged by Federal law with the responsibility of enforcing its provisions.

There are several means that have been employed in the past in influencing legislation. Sometimes, though not often, the giving of direct bribes to legislators is resorted to. But it is becoming rather dangerous in these days to resort to that means. Exerting economic pressure on legislators is another means often em-

ployed. The giving of "inside tips" on the stock market is another means employed. The currying of the friendly favor of legislators by extending social courtesies to them is another method. The making of political bargains and the promise of political support are other methods. But the most powerful influence of all is the bringing of pressure of public opinion to bear upon the members of legislative bodies, for nearly every legislator covets re-election by the voters.

Public opinion is sometimes faked. It sometimes happens that selfish interests, seeking the passage or defeat of a given measure, send forged telegrams in wholesale lots to members of the Senate and of the House of Representatives, thereby giving them a false impression of public opinion. But the reactionaries are skilled not alone in the use of questionable methods of influencing legislation; they also know full well how to make utmost use of other means of propaganda. They know how to make advantageous use of the press, of the radio and of the movies. In the field of educating the public to their point of view, their effectiveness is beyond compare. They employ "brain trusters" of the highest rank. Their publicity departments and their public relations departments are supplied with the best available talent in the field of psychology. They are most clever in coining trick phrases calculated to stir the emotions, if not the thought, of the public.

But in the field of suppression by intimidation do they most excel. By most diabolical methods do reactionary interests seek to discourage those whom they fear as dangerous men, likely to expose their nefarious

practices to public view. They are so proficient in the exercise of social control that they seem able, now by pushing this button, now by pushing that button, to direct the lives, the thinking and the emotions of the people. They are past masters in the gentle art of regimentation by mob psychology.

The methods which honest, forward-looking citizens may use in educating the public and in forming public opinion are necessarily more limited than those used by unscrupulous reactionaries. Yet honest, forward-looking citizens might well make wider use of educational methods in the public interest than they do. It is a hopeless, defeatist philosophy which leads progressive citizens to exclaim: "Oh, what's the use? The enemy has control of the press, of the radio, of the movies, of every channel of communication with the people!" It is not so bad as that. The enemy is not so powerful as many profess to believe; merely crafty and resourceful. If the true measure of the power of the reactionaries were to be taken it would be found that their position is, at many points, most vulnerable. The complete defeat of reactionary interests needs only exposure to the light of day. The law is on the side of right; the Gospel is on the side of right. If liberals were half as resourceful as are reactionaries, the light of law and of Gospel could be made to shine brightly in dark places. The effort has never yet been seriously made.

Take, for example, the schools, the colleges, the Universities. There is no good reason why schools and colleges in the agricultural districts should be in control

of reactionaries. The Universities are often "bluffed" out of performing the true duty of a University through fear of being branded by brazen intermeddlers as "hot-beds of radicalism." Some of our Universities cannot be "bluffed." If a University is afraid to permit its professors and students to look below the surface of things and seek out the roots of human problems, it is not worthy of the name "University"!

Take the churches, for example. The light of truth should shine from every pulpit. What do the pastors fear? Do they feel that the power of darkness is greater than the power of light? Surely not. It is not right for a pastor to become a "camp follower" of any political, economic or social group. But in his own chosen camp, aloof from factional fights, he may find plenty of useful work to do in following the steps of the Carpenter of Galilee, who never feared to speak the truth on any subject. The pastors are gaining courage to preach good news to the poor and to the oppressed. The church is beginning to take an interest in the problems of human life.

Take the press, for example. Is it necessary that the farm press or the labor press be under the domination of reactionaries? The editors of farm and labor papers will, without doubt, welcome articles treating vital, current problems of the people. The labor press and the farm press will unite in fighting a common foe. The press is not entirely in the hands of the reactionaries.

Take any other channel of communication—the radio, the movies, the forums. They are not so closed

to liberal thought as may be supposed. It is simply that progressives do not sufficiently avail themselves of these valuable opportunities of placing before the people convincing presentations of the truth.

The reactionaries are weak in argument, but strong in strategy; the progressives (by which term we mean the forward-looking citizens) are strong in argument, but weak in strategy. The reactionaries make much of their opportunities because much of money, much of special privilege, is involved. So it is not a question of out-arguing the opposition. It is the very lack of sound argument that forces the enemy to attempt to suppress free speech and to intimidate those who would point out the plain truth. It is not possible for the enemy completely to suppress free speech in this country, but it is possible for him to sow seeds of dissention in the ranks of the progressives and to seek to destroy honest men who jeopardize his corrupt position in society. The enemy has his spies in "key" positions everywhere.

"While the men slept, his enemy came and sowed tares among the wheat."

Progressives must bestir themselves! They must not sleep while vital issues are at stake! Progressives are found in every group of forward-looking citizens—in labor organizations, in farm organizations, in the field of business, in churches, in literary circles, in schools, colleges and Universities. These progressives in various groups and in various strata of society should consolidate their ranks. They should find means of forming closer contact with each other, and they should banish

strife and dissension among themselves. They should organize in one great army, facing a common foe. They should organize for study and for self-discipline. They should study in greater concert the vital problems of the day. And they should study them afresh —not from the view-point of generations gone. These studies should take a practical turn—to learn not only the identity and position of the enemy across the battle line and how to stop his march against the common good but also to learn by what strategy, by what means and methods, he throws into confusion the forces of social progress, and how he inspires fear in opposing ranks.

The fear of the power of the enemy is, in large part, a mental hazard which an audacious enemy has been permitted to erect. The fact is that his control of great wealth arises out of the misuse of other people's money, and out of the *unlawful* control of the markets which all must use—the money market, the stock market, the commodity market. If these subjects were given a proper study, the supposed power of the enemy would shrink and the obsessing fear would give way to confidence in the power of truth.

Of what, in a decent state of society, should men be afraid? Unemployment would no longer exist. Every man would sit in his own door-step and under his own fig tree, and fear no man. People should study to learn by what means the enemy of society is able to dictate who may earn a living and who must live in the fear of starvation. These various controls of society

which the enemy employs must be taken away and turned to better use.

These things should be studied in the light of the knowledge of the value and the sacredness of human life—a possession of precious price, now reduced to shoddy cheapness in the markets of the world. It should be learned how to distinguish sharply between the "rugged individualism" of selfish profit-seeking at the cost of the public welfare and the honest individualism that seeks self-development through the opening of opportunities for the equitable development of all. The prevalence of unrestrained, greedy self-seeking, has made many feel that the nation is made up wholly of beasts of prey and victims.

To be specific and practical, let study be made of the stock exchanges for awhile. The Congress has instructed the Securities and Exchange Commission, as was pointed out in Chapter XI, to make a study and to report back on four topics: 1. The feasibility and advisability of the complete segregation of the functions of dealer and broker; 2. Trading in unlisted securities upon exchanges; 3. Rules of national securities exchanges with respect to the classification of members, the method of election of officers and committees to insure a fair representation of the membership, and the suspension, expulsion, and disciplining of members of such exchanges; and 4. The work, activities, personnel, and functions of protective and reorganization committees in connection with the reorganization, re-adjustment, rehabilitation, liquidation, or consolidation of persons and properties. Abuse of

the proper functions of the large exchanges is a constant menace to the nation—to the people of the nation. Study should be made anew of the topics: Hedging, Short Selling, Margin Trading, Futures Contracts and the like. If one would serve his country well, he cannot avoid making a study of topics so full of import to the people. Study should be made of the provisions of the Capper-Jones Bill (H. R. 6772), to which reference has been made. Study should be made of consumers' co-operative movements, and of producers' co-operative movements—especially of the development of farmers' co-operatives in this country. One would do well also, in that connection, to study the Canadian system of co-operative marketing of grain, an excellent treatment of which subject has been prepared by J. F. Booth, Agricultural Economist, Division of Co-operative Marketing, Bureau of Agricultural Economics of the United States Department of Agriculture, under the title: *Co-operative Marketing of Grain in Western Canada.*

Protests will arise against the making of such studies. Some will say that they are not equipped by training or experience to do so. Yet, nevertheless, it is important that these and similar studies be made. Others will say that life is too short to spend in hand to hand fighting with the foe in the field of education; that what is most needed is a violent overthrow of the *status quo.* But a more considered judgment will decide that ballots are better than bullets in solving the problems of human life; provided, of course, that the balloting is

done by men and women, fully informed and unafraid. If improvement of human conditions cannot be had by democratic means, then resort may be had to directer action to dispossess the usurpers of ill-gained power over human life. Education for the emancipation of American bondsmen has never yet been seriously tried. That the American people are bound in bondage by an Invisible Government that pushes buttons, behind the scenes, and gets the results it desires, to the detriment of those so bound, cannot be doubted longer. It is a bondage worse by far than that of the unemancipated black. The Invisible Government must be dragged into the light of day and smashed by the power of public opinion.

The people have been too gentle with and tender of the "vested rights" of Invisible Government. The enemy across the line of battle uses methods both fair and foul. In order to make a successful attack and drive the enemy out from his intrenchments of special privilege, the people must first learn to understand him and his nefarious methods, and to realize why the enemy hits below the belt. The "whispering campaign" is a powerful weapon which the enemy uses with deadly effect. Some will say that it is necessary to fight the devil with his own weapons. Such is not the case. Progressives must not use unfair weapons or resort to foul play, even if the enemy does. That is not to say, however, that means should not be found to protect oneself from the effects of poison gas or to expose the detractors and their methods to the light of day. No opponent

of the Invisible Government is immune from dastardly attacks under cover of darkness, and behind his back. Those are the chief characteristics of the enemy's attack. Even the President of the United States is not exempt from attack in "whispering campaigns." No man is safe in his own home, or in his employment, or even in his club from underground attacks of Organized Greed.

The methods of the enemy, his strategy and his "whispering campaigns," must be given careful study. The enemy does not announce his attack in the open or on the street corners. His emissary does not shout aloud: "I am sent from Wall Street to say that we do not like your progressive friend, Mr. So and So." On the other hand he whispers, and causes to be whispered, *confidentially* into the ears of the friends of Mr. So and So the false tales that he dares not to tell in public. To say that such methods of warfare are unconstitutional is to put it mildly. The Bill of Rights means nothing to American citizens if it does not mean that the accused shall have the opportunity to face his accuser. Progressives, in self-defense, must learn that slanders whispered into the ear in confidence are undeserving of confidence. There is an obvious way of protecting oneself from the injurious effects of poison gas, that is, by insisting on exposing such malicious confidences and those who whisper them.

Speaking of evil motives, there is, in the legal profession, a fiction that the motives of opposing counsel are always pure and must never be brought into ques-

tion. There are many fictions in the legal profession, but this one is most damaging to the public in its effect. The motives of one who devotes himself unselfishly, without hope of personal profit, to the public good are hardly open to question. But the motives of those who, for private gain, continually consort with the enemies of the people can hardly be regarded without suspicion. The legal profession, by virtue of hypocritical professions of "professional courtesy," harbors many a crook who should be brought to the bar of justice. Many "leaders" of the bar do not hesitate to impugn the motives of one who will not play their game. The public is not much deceived by pious pretenses of a "profession" that has justly fallen into so great ill-repute. "Professional courtesy" is a shield only for those who play the game of the financial powers-that-be. Let all others beware! If one must choose between treason to the profession and treason to the people, one would better choose the former.

A new and perplexed generation is coming on. From continuous lack of useful employment, many young people will become unemployable. Many of our youth will deliberately give themselves to crime for want of a better vocation. Many will become, in hope of obtaining a livelihood, the pliant tools of reactionary interests. Some will consider it their duty, come what may, to align themselves on the side of right, and carry on the fight for freedom. How much will they be able to learn from the experiences of their elders? How much will they find it necessary to learn from their own

bitter experiences? Only time can tell. That the new generation will do better than did the old there can be no doubt. And the battle against Organized Greed will finally be won.

The battle will be won when the people shall have learned the lesson of peace on earth, good will and *good faith* among men.

Author's Note: On Monday, January 6, 1936, since this manuscript was put into type, the United States Supreme Court handed down its momentous decision declaring the Agricultural Adjustment Act, 1933, unconstitutional. Much as we may deplore the effect of this decision, we must face the fact. It would seem that the time has now come when it is urgent that the farmers, with the aid and encouragement of the Government, should promptly perfect their co-operative marketing machinery. In this connection it is appropriate to remark that "A Plan for Surplus Control" has been carefully worked out and devised by Mr. John Brandt, president of Land O'Lakes Creameries, Inc., of Minneapolis, Minnesota, and to suggest that it is worthy of most considerate attention by farm leaders and statesmen. A full description of the plan may be found in *American Co-operation,* 1934, being the Proceedings of the Summer Session of the American Institute of Co-operation, held at the University of Wisconsin, Madison, Wisconsin, July 9-14, 1934.

ADDENDUM

Excerpts from Letters from Deans of Theology

(The excerpts printed below are taken from letters received from Deans of Theological Seminaries in reply to the author's letter, set forth in Chapter IV.)

Letter No. 1:

The traditional Jewish attitude on the subject of Gambling is set forth in The Jewish Encyclopedia, article, Gambling. To the data in the Jewish Encyclopedia, let me add this quotation from a twelfth century Hebrew work on Ethics *apropos* the subject of charity:

> Have no pity on . . . one who incurs a gambling debt and then pleads, "Help me that the winner may not expose me." Better shame a gambler than assist a gambler.

I once heard the late Prof. Israel Abrahams mention a Rabbinic passage to the effect that the enslavement of Israel in Egypt was Divine punishment for Joseph's grain manipulation described in Genesis, chapter 47. I have never succeeded in locating the passage but hope to do so sometime.

Letter No. 2:

Replying to your letter of December 10, the Jewish faith has since the beginning of its recorded history taken a definite stand against all kinds of wagers for profit. In Talmudic times people engaged in such games, or who made wagers on the flight of birds (which then took the place of betting on horses) were declared to be unfit to be witnesses in court. (*Mishna Sanhedrin* 3.3.) While

the Rabbis could not find any prohibition on the subject in Scripture, they maintained that by accepting unearned money such persons showed themselves too little conscientious to have their word accepted by a court. Nevertheless, the practice of games, both for money and otherwise, continued into the Middle Ages. There are on record a number of denunciatory letters by Rabbis and ordinances of various communities with regard to the practice. They can be found in Israel Abraham's *Jewish Life in the Middle Ages,* pp. 414, 418; and also in Finkelstein, *Jewish Self-Government in the Middle Ages,* pp. 60, 88, 191, 242. It seems that in the course of the Middle Ages, the Rabbis arrived at a kind of compromise by which games of chance were permitted on certain half-festival days. They were absolutely prohibited on the Sabbath and on the great Holy Days, but some tolerance was shown for them on Hanukkah and Purim, and the week days of Passover and Sukkot. In modern times the Jewish Rabbinate has followed these precedents and generally taken a very definite stand against games of chance for profit. On the other hand, indulging in games of chance without profit is a pastime which cannot be entirely discouraged. It is for many people the only opportunity for social intercourse.

Letter No. 3:

Now, as to gambling, it is a fact that Christian people do not gamble, and the Presbyterian Church, U.S.A., of which I am a minister, has always protested against gambling in any form and has never tolerated raffles in churches. In this connection, if you would turn to what is known as *The Presbyterian Digest* (1922), volume I, pp. 464ff., you will find the official position of the Presbyterian Church. Of course you will have access to this in the Congressional Library.

In our Seminary we have a course on the social and ethical teachings of Jesus, which deals frankly with the great questions of personal and social ethics, which are being discussed today, and our students are indoctrinated in regard to these matters. In my judgment the tendency to revive lotteries, the prevalence of

number rackets, bridge parties where the play is for money, and stock gambling are symptoms of the moral degeneration of the Western World. If you will publish a book that will help the American people to see the evil of all these practices, you will put society under great obligation to yourself.

Letter No. 4:

There is no adequate book of which I have knowledge on the subject of gambling and crime. I am glad that you are preparing one. We have just had the question of gambling at horse races, before the voters of our state and they voted by a large majority to permit it. There is a sad lack on the part of ministers of any definite opinion as to why it is wrong to gamble.

So far as the Seminary is concerned, the matter is discussed in the department of Systematic Theology in the course on Christian Sociology and it comes in incidentally in other courses but we have nothing formal on the subject and I doubt if any other Seminary does.

Letter No. 5:

Thank you for your letter. May I say I know of no subject upon which there is the actual need of a more definite presentation of truth and convincing inspiration. Gambling has increased so rapidly in so many forms and has received so much encouragement it seems to me from so many sources that surely the Church should be clear and plain upon this subject.

I shall look forward to reading your volume with much interest.

We have in our courses, both in philosophy and pastoral theology, the opportunity to present clearly this subject and to influence young men as to their attitude. We believe it is our duty to do so and are endeavoring so far as we can to bring the wrong and folly of this damaging influence to the minds of our young leaders.

Letter No. 6:

I am under the impression, however, that you will find the church has never deemed gambling as a legal problem in distinction from an ethical problem. It has always been an ethical problem and is so dealt with by the church, so far as my knowledge goes, and I think you will find this to be the situation when you examine the records in the matter.

As to what my attitude toward gambling is personally, it is the same as Calvin Coolidge said about the preacher's sermon on Sin: "I am agin it." I think it is one of the most subtle and morally disintegrating practices of the American people.

Letter No. 7:

Certainly the Church is interested in the problem of Gambling. Certainly the church to which I belong takes the position that gambling is an ethical issue. Certainly our students are taught that such practices are against the laws of God and man and fundamentally hurtful to God and Society. Certainly the church to which I belong is willing to co-operate with any sane agencies for the eradication of this evil.

Letter No. 8:

As you are probably aware, according to the statement of the *Presbyterian Standard* in its interpretation of the 18th Amendment, gambling is forbidden, and from time to time our General Assembly has issued warnings to the Presbyterian Church against participation in "games of chance," card playing and lotteries.

It seems as if it is timely now for the Assembly to make a new deliverance, and in all probability at the meeting in May, at the instigation of the Department on Moral Welfare, some action will be taken. I cannot inform you as to the extent to which the Church at large gives attention to this subject.

Letter No. 9:

Dr. Coffin has turned over to me your letter concerning the treatment of the problem of gambling in theological seminaries.

We treat it here in relation to the whole problem of speculation and investment. We regard the legal lines as purely formal and quite inadequate. The roots of the matter seem to us to lie in an economic method that proceeds by speculative guesses instead of by measurement and scientific analysis.

Letter No. 10:

I think you are quite right in your position that Gambling and Crime are ethical questions and hence matters for the church to face in its ministry. As a seminary we so regard it and are trying to fit our students to deal with the matter, as well as with other social and ethical problems of the day. If I am not mistaken the churches, through the Federal Council of Churches of Christ in America, are dealing with the matter as a social and ethical question and should give you encouragement to deal with it as such in your book. I cannot see why anyone should regard the question as outside the realm of Christian ethics and object to the church openly and unitedly expressing its conviction on the subject.

Gambling, since the repeal of the prohibition law, is making desperate efforts to get back under the guise of a legalized business and entrench itself again along with other evils of a destructive nature. I say God bless you in your efforts to show up the racket in its true light. Trusting this may be of some slight encouragement to you I remain

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Letter No. 11:

For our denominational attitude see Minutes of General Assembly 1934, p. 653: "We deplore . . . prevalent gambling and encouragement given it by some recent legislative enactments."

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Our Seminary would confidently affirm the moral issue involved. We would discountenance the church entangling its work with chance-taking devices either for amusement or gain. Just how the church can make its testimony and teaching most effective is indeed a difficult question.

Letter No. 12:

I have your letter of December 13, and can answer it only by saying that so far as I know the sentiment throughout our church and the attitude of all concerned with our Seminary is very definite in regard to the question of gambling. It certainly is regarded as an ethical problem as well as properly subject to legal and judicial treatment.

The General Synod of the Reformed Church in America in its session in June, 1934, passed the following resolution: "Resolved, that General Synod record its protest against the tendency to relax gambling laws, to legalize lotteries, and to promote social activities such as prize fights and wrestling bouts, games whose only purpose is doubtful monetary gains if not open public gambling, and similar social affairs which cater only to the lower aspects of life."

Letter No. 13:

The historical position of our Church on the subject of gambling is probably familiar to you, but so far as I know, no recent pronouncement upon the subject has been made. I have no course which deals specifically with the subject you are discussing and while I recognize its great importance, I doubt whether in the work of my department I can at the present time do more than indicate in a somewhat general way the application of Christian principles in this field.

Letter No. 14:

Without taking the time to go into the subject at length, let me say that so far as our Lutheran Church is concerned, we have always, at least in theory, taken a very definite stand against gambling in any form. However, the enforcement of anti-gambling laws, as indeed the enforcement of all laws, we consider the duty of the State. The Church as such is not called upon to do police duty, nor can it force its principles upon those who refuse to yield to the persuasion of the Word of God, which she preaches. But we do hold that it is both the right and duty of Christian

citizens everywhere to demand that the officers of the State see to such enforcement.

Lutheranism aims to combat the evil of gambling, as indeed every other individual and social evil, by careful instruction on the basis of God's Word. The sin of gambling is definitely forbidden in the divine commandments, "Thou shalt not steal" and "Thou shalt not covet." In our catechistical instruction of the youth preparatory to confirmation we endeavor to drive these truths home into the hearts and consciences of our young people; in our sermons we take occasion to point out this sin; in our pastoral work with individuals we labor to guide and direct our people in the ways of Christian living, including the avoidance of this sin.

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We believe that if every Christian Church and every Christian pastor in our country would follow similar methods and aims, many of the glaring economic and social evils of our nation could be effectively curbed, if not entirely eradicated.

I shall look forward with great interest to the publication of your book on Gambling and Crime, and I should like to be informed when it will appear.

Letter No. 15:

The idea of a book on Gambling and Crime interests me very much. I am glad that you are willing to score the church people who are indifferent to Gambling and other vices. I hope, though, that you will try by questionnaire method or some other poll of votes to find out just how the pastors stand for and against and how the people stand for and against and also how the professors stand for and against. Then, when you criticize the Church, you will be able to say that a lot of people in the Church are against such evils as card playing and other types of worldliness, while others are lax. In the congregations pastor and people are usually of the same mind, for or against, and pastors come out to the congregations reflecting, as a rule, the attitude of their professors at the theological seminary and at the church colleges, both of which

institutions today in the race for accreditation have become quite worldly minded.

With regard to whether the seminaries teach ethics in general and the ethics of Gambling in particular, I might say that once I made a survey of all the seminaries in the country and I found ethics taught everywhere, as I recall it. I did not at the time inquire whether they brought up the matter of Gambling in these courses on ethics, but I can say that when I studied ethics we studied about Gambling and roundly condemned it. I went out from the seminary as a convinced opponent of Gambling. My experience with congregations is, that they have usually come over to my point of view, sometimes after considerable struggle. I was called in once to help settle a congregational dispute at which the new pastor opposed Gambling, Lottery and such like. The church council decided to have Gambling to raise the church budget. Neither would yield, so the pastor had to leave, and they elected another who was willing to support his councilmen's crooked ways of raising money. As to grain gambling, the seminaries I have been connected with have not said much, by my own views are against such practices. The Lutheran seminaries recognize in the moral law absolute standards, and in human legislation and custom only relative standards, which one may or may not disregard, depending on circumstances. Men must obey God rather than man. The strictly ethical is more fundamental than the legal. The legal may be wrong but should be respected unless it conflicts with the will of God.

Letter No. 16:

In reply to your inquiry, I wish to say that while we have no special course in ethics, but combine ethical matters with our courses in systematic theology and pastoral theology, I can say that our students are informed about gambling. They were instructed with regard to this matter even before they came to our Seminary in their pre-theological studies. I think I can say that the Church in general is opposed to gambling in every form, and our Lutheran Church in particular also emphasizes this point in

a very decided manner. Personally I regard gambling in every form as a sin against God's holy commandment. Therefore we are not especially interested in presenting this as a legal problem, but much more as an ethical problem. Of course, we also state, in instructing our students, that even the State forbids the common form of gambling, but aside from that, it is a religious matter and gambling by which I obtain the money or possessions of my neighbor without giving him an equivalent for it, is morally wrong. Therefore whenever the Seventh Commandment (the Eighth Commandment according to the numbering of the Commandments in the Reformed churches) is expounded, gambling is included.

Letter No. 17:

Your letter of the 3rd inst. was referred to me this morning. In reply I beg to say that the question, as far as the training of pastors in the seminary is concerned, is fully covered in the course on ethics, and is also touched upon in the course in pastoral theology. However, there is no special course on the subject.

I do not believe that our young men go out into the field unprepared to face the matter squarely and frankly.

As far as the Church is concerned it has spoken openly and fearlessly in denouncing gambling as sin, with no camouflage. In the matter of so-called "innocent gambling" (I mean, raffling and the like, at church bazaars, suppers, sales, etc.), our Lutheran Church frowns on all these catch-penny schemes, even though for a "good cause." Wartburg Seminary takes up this question under the head of "Stewardship" in pastoral theology, and advocates a manly paying of all expenses by putting your hands into your own pockets, and not those of someone else, under whatever guise.

Letter No. 18:

In our theological seminaries the refinements sometimes appearing in church endeavors are definitely denounced. Likewise gambling with cards for bridge prizes and the like. Throughout

the Middle West I am sure that collective Lutheranism stands definitely opposed.

In a book of instruction which I used for several years as a pastor, an explanation of Luther's Catechism, under the Seventh Commandment, "Thou Shalt Not Steal," was this: "He also forbids us to get our neighbor's property by false ware or dealing —cheating, false listing of property for taxation, usury, bribery, *lottery, gambling,* etc." A church group which puts these listings into its system of instruction for children is naturally definitely concerned about the problem.

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A Bill introduced into the Minnesota Legislature this week, establishing a state lottery, encounters a constitutional provision, which forbids the Legislature to establish such an institution. This, I feel, represents the real sentiment of these midwestern states.

Letter No. 19:

In the Brite College of the Bible, the theological seminary which is a part of Texas Christian University, every student is given a semester course in Ethics and most of them receive also a course in the social application of Christianity. I feel certain that the ethical standard which the students themselves take with them would set them right personally on the subject of gambling, even in those fields on the edge of the practice that might be under question. I do not know that anywhere in their training they encounter any teaching that gives them legal information on the distinction between gambling and something which is not gambling from a legal viewpoint.

It appears to me that if some specific information is in book form which can be given to students on the subject of legal status and definition of gambling, which you mentioned, it would be very valuable and should be given to the ministerial students, as well as to others.

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As for our Texas situation, it is very obvious to everybody

that a great wave of gambling has come afresh in the form of the racetrack. A lot of data could be produced from the merchants of our city to show that many of the women have to cut down on their expenditures for dry goods because they have gambled their allowances on the racetrack.

Another very practical situation that comes close at home is the use of the marble machine in the drug stores and hotels. Without doubt, this is very rapidly developing a spirit and practice of gambling among many young people and older people. It does not seem to be under the control of the officers of the law. The trouble is most of us are not informed on it or how to get at it. There is a widespread feeling of unrest and dissatisfaction on the part of many good people, especially church people in Texas now on account of these two recently revived forms of gambling that are reaching the masses of people with great harmful effects.

Letter No. 20:

Your letter concerning your book on "Gambling and Crime" is before me. I should expect naturally that all seminaries regard gambling as an ethical problem. In dealing with preachers and ministerial students and with churches, I have never thought of it in any other light. We have, to be sure, courses in ethics, social science and various pragmatic themes. I think that our literature in the library is good on these points.

Personally I do not try to draw lines between what is gambling and what is not gambling. My instructions both in the pulpit and the class room is to avoid every appearance of evil and to keep just as far away from anything that might be construed as an approach toward gambling. It is one of the things to kill and should be classed along with stealing and lying; all three of them represent fruit growing from the same branch.

Letter No. 21:

You make inquiry concerning (1) the attitude of the church at large upon the question of gambling; (2) the attitude of my

own communion; (3) my own personal attitude. Replying to these specific questions, I should say:

(1) The church at large has always denounced gambling in theory but a good many instances may be found especially in Roman Catholic circles, where gambling in practice has been permitted, sometimes to the profit of the church itself. The definition of gambling has never been made very clear. Perhaps no denomination among Protestants has been more strict on the matter than the Methodists and yet Bishop Cannon considered operations on the stock market, which many would regard as gambling, as not inconsistent with his Episcopal conscience. It is only fair to say that gambling is not easy to define, and this fact has led to much confusion upon the subject.

(2) Inasmuch as my own communion possesses no book of discipline except the New Testament and matters of the kind are therefore left to each individual congregation for settlement, it is not possible to furnish any conclusive data upon the question. On general principles, gambling has always been in disfavor just like intemperance, but the matter has never been very clearly defined and there has been probably no uniformity of procedure among the different congregations. I recall the case of a prominent Kentucky family which was excluded from one of our Bluegrass churches because it insisted upon patronizing cock fighting. Perhaps the elders who took this action were not averse to attending the races.

(3) My own personal feeling is that the philosophy of gambling is essentially a part of the survival of magic or what may be termed the childlike in human civilization. Children want to get things by short cuts and this is the very essence of magic. It is also the philosophy of gambling. It cuts the ground from under orderly, scientific progress in every field including morals and religion. The only remedy for the situation is education and an increasingly better understanding of the factors which are involved in the program.

Letter No. 22:

We do not have any course in The College of the Bible treating specifically with such a subject. In most of our courses, we are greatly concerned with matters of morality and sometimes deal with such a question. However, we have not felt that it was desirable to have a course dealing with just that one phase of our moral problem. All of our courses are approached from the point of view which studies the social factors operative in the ministerial task. We do not isolate them nor place them in a separate compartment but try to make them an integral part and essential element in the approach to every problem. For that reason, we have not felt it desirable to have such a course as the one in "Social Ethics."

Most colleges offer courses in Ethics, Social Ethics or Christian Ethics, and students of Theology usually take them before entering seminaries. For that reason, many seminaries do not offer such courses.

Letter No. 23:

Your letter concerning your book on Gambling and Crime has been received and I am very much interested in what you say. I think it may be true that gambling is not alluded to quite as frequently by ministers as it was in the years gone by when the changes were rung in such a commonplace way on gambling, card playing, horse racing and dancing. Upon the basis of the sermons of the past that seemed about the only sins of which men were conscious. I believe that the religious thinkers and better preachers have in some sense ignored utterances along these lines because they have been trying to help build character ideals that would make such manifestations appeal in their true light.

I am confident that there is little real neglect of the issues involved in the crimes you refer to in our institution. It is possible that the social-minded of the present day have been ringing the changes so regularly on race hatred and economic justice that they have neglected too much the gambling and liquor evils of our day. I am confident also that if the ministry is made conscious

of this evil, which I believe your book will help to do through allusions and illustrations, their sermons will help to bring the evil to the public attention. I see no point, however, in castigating the church if proper stimulation to help them sense the evil will strengthen the church to do its work and give it the vision of the task.

Letter No. 24:

I have before me your letter of December 21st. I feel that the problem you are attacking is exceedingly timely. I commend you in your efforts.

I fear that I can be of little help to you other than in giving a personal expression. My own affiliation as you may have reason to know is with the Christian Church. It is our desire to mould congregations after the pattern of local churches as set forth in the Book of Acts. We believe that the local church is largely autonomous, and that pronouncements of an overhead organization are somewhat out of order. Of course we have our various conventions and do pass resolutions on various moral questions, but what I am meaning to say is that there is no recognized overhead organization making authoritative statements. You can see therefore something of the difficulty in citing you to any very definite opinion. I verily hope that church people not only of my own communion may have an awakened conscience on this terrific evil so widespread in our day.

As an individual I certainly hold that gambling is an ethical problem. It seems to me that it is an evil that menaces our welfare at almost every turn. By no means am I a close student of economics, but it seems obvious that much of our trial of these recent years has resulted from a sort of speculating which basically has been nothing more nor less than sheer gambling. Playing the stock market on a marginal basis is gambling. Any disposition to float watered stock that represents no definite investment is likewise iniquitous. The time has come when we must get before us the facts on such evils.

Letter No. 25:

There is a book by Dr. Speer entitled, *A Young Man's Questions*. It was published by Fleming H. Revell Company in 1903. There is a chapter on "Is It Wrong to Bet?" It is chapter eleven. I should think from it you would be able to find valuable material.

Letter No. 26:

We make some excellent offerings in the field of ethics, particularly with reference to the philosophy and history of this subject, and also with regard to the Christian view and practice. I find, however, upon enquiry, that the subject of gambling in particular has not received at our hands any such measure of attention as we now believe it deserves. This is one of the sins of omission which we occasionally discover in what appear to be well rounded curricula.

We teach with some care the ethical significance of the obligation to contribute to society economically and otherwise as full a return as possible for what we individually gain from our social relations. I suppose that we have held that the proper development of this view takes care by inevitable deduction of the question arising regarding the economic dishonesties and evasions which have many names, such as stealing and gambling.

Our professor who handles the philosophy of ethics feels himself prompted by your enquiry to review his teachings to see whether he may not strengthen and particularize them as they bear upon gambling.

Likewise I myself, in the conduct of classes on social and economic forces, am inclined to believe that gambling can be closely associated with several other evil practices and may profitably receive more consideration than I have ordinarily been disposed to assign to it.

I think this is especially true in view of the fact that here in California we have within the last year or two definitely legalized or tacitly permitted a lot of schemes of this sort which hitherto have been taboo, such as legalized betting on horse racing and dog racing, and disguised games of chance such as Fascination, skill-

ball, and a thousand others which are being offered along our highways. Of course, we have the almost omnipresent slot machine. I have a feeling, however, that any attempt to dig out these devices is to shoot generally at small game. Under them all there are certain human desires and delusions upon which the promoters of these things prey. At worst I think they may be but childish imitations of the greater gambling devices which in the guise of business or wholesome speculation have gripped the American mind.

We will await with happy anticipation your book on gambling and crime.

Letter No. 27:

Your request is an important one, but, of course, difficult to answer not having seen the chapter in question. Judging from your own statement I might suspect that you had rather sharp criticisms of the ministers in general for not being more concerned about gambling and crime. No doubt a large proportion of the ministers are not working as hard as they might for crime suppression, yet I feel very little will be gained by scolding and deriding them in this matter. Unfortunately there is such an avalanche of problems of which gambling is but one phase. Temperance, poverty and others also stand out prominently. We cannot enter into the suppression of all such causes of crime with equal vigor. We are compelled to select.

It would seem to me, therefore, that it might be well to first make your case by definite data which will convince them that gambling is one of the major issues before us. To incorporate the following points would, to me, seem helpful.

First: Show up the prevalent mood of trying to get something for nothing as the spirit of gambling.

Second: The church is yet too restricted in its view of individual gambling at chance games and slot machines. Broaden the view.

Third: Show more facts and more recent data on corporation gambling in stocks and the necessities of life and highly speculative ventures.

Fourth: Give some constructive suggestions as to what the minister and the church can do about gambling besides teaching and preaching. This they are doing, but few of them have any intelligent idea what practical steps can be taken to make their attitudes against gambling fruitful of definite results.

Letter No. 28:

I am much interested in the fact that you are engaged in the preparation of a book on *Gambling and Crime,* and am glad to furnish you with any information which I can give on this subject.

I am somewhat surprised to know that anyone should have thought it necessary to tone down your discussion so far as it related to the duty of the Church in this matter. So far as I know, the Christian Church in general has always been opposeed to gambling, and certainly that branch with which I am associated has been very definitely opposed to the practice. I would say very definitely, in response to your question, that the seminaries regard this matter as presenting an ethical rather than a legal problem, and that we do seek to instruct our men in the ethical reasons which should be urged against gambling. It is possible, and indeed probable, that the Church has taken too limited a view of gambling, and that it has confined its opposition too largely to the more obvious forms of gambling, rather than to gambling in stocks or on the exchange. In this particular, there is doubtless room for much instruction to be given, but I do not think that when gambling is recognized as such, there can be any question that it is contrary to the conscience of most branches of the Church. My personal attitude is one of very definite opposition to all forms of gambling.

Letter No. 29:

Dr. J. Porter Smith touches upon Ethics in parts of his course and Dr. W. T. Thompson in his classes in Christian Sociology refers to gambling, but we have no first-rate discussion of this very important subject. I would not say, however, that the seminaries regard this matter as presenting merely a legal and not an

ethical problem. The truth of the matter, as far as our Seminary is concerned, would probably be embraced in this, that our curriculum is so crowded with the older disciplines and with the newer ones which have been added of late years that we have not given a great deal of attention to this particular ethical question.

We have in our library several books on the subject of gambling but have not made any particular effort to collect books on this specific subject.

I believe you are going to render a real service in publishing your book and I shall await its publication with great interest. I am sorry that I am not able to be of greater assistance.

Letter No. 30:

In general, I think that there is a real confusion on the part of people as to what constitutes gambling. I think you are right in assuming that there is comparatively little literature on the subject in the average theological seminary library. I think it would be a good thing for them to have more.

I am inclined to think that in every course in social ethics in a divinity school the minister, who is to be a leader on moral questions and moral thinking, should be given definite access to the materials upon which he can form an adequate judgment in the matter. Books like:

The Moral Effect of Gambling, by F. Adler;
Gambling in Christian Ideals, by the Epworth Press of London;
Is Is Wrong to Gamble?, by the Student Christian Movement of London;
The Ethics of Gambling, by MacKenzie;
Gambling and Religion, by James Glass, or
Why I Do Not Believe in Gambling, by the University of Chicago Press,

should be in seminary libraries, and the students should be enabled to deal intelligently in instructing their people how to oppose the evil.

In the Northern Baptist Convention, at the latest annual meeting, a resolution in regard to gambling was introduced, rec-

ognizing its return, warning the people against it, urging the ministers to take the lead against it. A copy of that resolution can be secured by writing to the American Baptist Publication Society, 1701 Chestnut Street, Philadelphia, Pa.

Letter No. 31:

I am frank to confess I consider your undertaking a great one.

I further think that you should make it as strong as decent language can put it. Also have it understood that much of the plans used by the churches to get money have elements of gambling in them.

Letter No. 32:

1. Do the Seminaries regard this matter, that is, gambling, as presenting a legal rather than an ethical problem?

My answer is that the attitude of the faculty of the Southwestern Seminary is very strongly against gambling, as a public and personal evil of dire consequences. Of course, we are interested primarily in the ethical or moral issues involved. We believe that gambling is a serious detriment to all forms of life, material, spiritual, moral, ethical. It is one of the greatest instigators of law violation. It tears down all the moral tissues and affects detrimentally the whole body of society.

2. You ask for some suggestions as to how to treat the church side of this public evil.

I would say that a frank discussion with strong convictions conducted in the right spirit, the spirit of Christianity, would be the proper way. I would advise that you hit it hard, but do it in the spirit in which Christ condemned sin. I think Christians are too much responsible for the gambling craze. They have not stood against gambling as they should. Many of them have indulged and encouraged others to indulge in it, and this is foreign to the spirit of Jesus Christ and the purposes for which the churches stand. Words kindly said cannot be too strongly said in condemnation of such conduct on the part of church members. I

believe the churches ought to exercise constructive discipline for gamblers in whatever realm, and some plain words need to be said about it.

Letter No. 33:

I am glad to know that you are writing a book on *Gambling and Crime*. It seems to me that the conscience of our people is far from sensitive on the subject of gambling. Personally I should like to see all our ministers speak out plainly and boldly against the growing evil. I am sure that other crimes tread on the heels of gambling.

Some ten or twelve years ago Rev. M. P. Hunt, D.D., a brave Baptist pastor in Louisville, undertook to arouse the people of Kentucky against the pari-mutuel at race courses. A rider was surreptitiously put on the anti-gambling bill and passed both Houses of our Kentucky Legislature without being detected by the opponents of gambling. This authorized and legalized pari-mutuel betting at authorized race courses in Kentucky. Some ministers and some laymen in Kentucky took great interest in this campaign and tried to arouse our people to pledge the Legislature to repeal this rider, but they were not successful. As much as a million dollars has changed hands here in Louisville at the Derby in May.

In our Seminary we have a Chair of Christian Sociology occupied by Dr. J. B. Weatherspoon. Among the text books used by Dr. Weatherspoon are Ellwood's *The Social Problem;* Ward's, *Our Economic Morality,* and Groves', *Social Problems of the Family*. Dr. Weatherspoon in his lectures brings out clearly the evils of gambling. We are trying to inform our young preachers on this subject and prepare them to grapple with it in their future ministry. We regard gambling as not only a social question, but also an ethical question. We believe that young ministers ought to help shape legislation in such matters with a view to protecting our people against professional gamblers.

I fear that the stock exchange form of speculation made serious inroads upon our evangelical churches just prior to 1929. I am

confident that many deacons, elders and stewards were speculating along with others who had no conscientious scruples about gambling. I have been hoping that the great crash of 1929 would make Christian men think and see through this problem so that there would be no resumption of this form of gambling on the part of real Christian men.

I sincerely hope that you will give us a book that can be used either as a text book or as a regular reference book in our class in Christian Sociology.

Letter No. 34:

The Church of the Brethren has some decisions against gambling in all its forms. Its members used to be disciplined if found guilty.

Being largely rural, our membership has been but little affected by the temptations to gamble. Even church fairs and their questionable practices have been frowned upon and are almost nonexistent.

So far as I know we have never gone out aggressively to stamp out gambling outside our membership—except perhaps in isolated cases in communities locally.

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Any suggestions you could give us would be welcomed—both as to courses and bibliography.

Letter No. 35:

In reply to your letter of December 20, I would say that Greenville College and its Department of Theology are unalterably opposed to gambling, and so is the denomination I represent. In my opinion the church at large is opposed to it, and if the church does not do its duty concerning this matter, the chief reason probably is a failure to perceive what it can legitimately do. Perhaps you can be of service in pointing out in your book lines of activity against this evil in which the church may properly and most effectively engage. I think, also, that there is a paucity of

books dealing with this evil, compared, for instance, with the books dealing with the liquor evil. If you can effectively present facts which set forth the evils attending gambling, you will be performing an important service.

Letter No. 36:

The Church of course is not indifferent to the problem of Gambling and never has been. But the province of the Church is to *teach* rather than to legislate. The Church never legislated on the problem of slavery, for example; but the teaching of the Church was the force which has practically abolished slavery. Much the same thing might be said about the position of woman and the protection of childhood. It has been the continual proclamation of the Christmas Story that has brought about an improvement in the position of women and children. It is also the Church, and practically the Church alone, which has continually taught the brotherhood of the human race, and sought to do away with racial hatreds and narrow national antagonisms.

The Church is a teaching church, and thus lays the foundations for Christian legislation; but legislation is a matter which belongs more to the Christian state, if we have a Christian state. Our Lord and the Apostles never sought to change the great wrongs of their time either by revolution or by legislation. They did something more important—they taught, and then their converts did the rest.

Letter No. 37:

It is my conviction that you should *not tone down* the discussion on *Gambling and Crime* so far as it relates to the duty of the Church. Judgment inevitably begins with the House of God. The sentinel in the watch-tower of Zion must speak in no uncertain tones.

There can be no doubt as to the ethical implications of the opinion on grain gambling.

I am well aware of the great laxity even among church members in general with regard to these moral issues. We have a very

strong department of social ethics in our seminary. But I believe that much more must needs be done in the seminary to develop a very sensitive conscience on all these matters.

* * * * * *

I am solidly convinced that it does belong to the task of the church to be the conscience of society and the nation. I do hope that your book will serve to disturb the church and arouse it to a sense of its supreme responsibility to the world for which Christ died.

Letter No. 38:

In reply to your letter of January 3 allow me to say that I disagree with ministers who think that one should treat sin at any time in an expedient manner. God's Word does not take such an attitude toward sin, and gambling is sin. Crime also has become so notorious in America that the ministers of the Gospel who do not speak plainly and fully with regard to it are failing in their duties. Many of the pulpits of this country need to study the denunciations of the prophets of the Old Testament and of Jesus Christ against both gambling and crime.

Letter No. 39:

It is necessary that someone write something very pointed on the subject of Gambling. Do not make it too tame. Give the truth as strong and plain as truth will stand. Personally, I am opposed to all kinds of gambling.

Letter No. 40:

I have your letter of December 10 which awakens an interest in me personally since I am the teacher of Ethics and Sociological Science, as well as the head of the Department of Theology.

First, I would say there is a decided lack in research material in the theological libraries on the subject of gambling. I feel, however, that there is also a greater lack on the part of theological teachers and ministers of a real interest in solving this problem

of gambling. I feel very strongly that the church is not meeting her obligation to take issue with and side against this and kindred evils. Our own church is strongly a reform church and does her duty by her constituency.

Personally, I am opposed to all forms of gambling. By gambling I mean games of chance or any situations in which one takes something from another without adequate remuneration.

Letter No. 41:

I am interested in your proposed book on *Gambling and Crime.* I think one of the most marked evidences of the seriousness of our present lapse in morals is the prevailing attitude toward gambling. In my ministry—of some 40 years—I have seen a tremendous change, for the worse.

We in this seminary are of one mind as to this growing evil. But I do think there is a relative lack of research material on the subject. The enormous increase in stock speculation, in which many clergymen engage in these days . . . lead clergymen and educators, I fear, to soft-pedal any condemnation of gambling.

* * * * * *

I think you can properly arraign the church as remiss here. The hands of our religious leaders are not quite clean—note the Bishop Cannon episode!—and they naturally have some disinclination to denounce that of which they are in some measure guilty themselves.

It is an ethical rather than legal problem. But nominally the legal attitude has been higher than that of the supposed teachers of morals.

Letter No. 42:

It is surely the duty of Theological Schools and Churches to teach that the spirit of gambling is stealing. To do this effectively more knowledge than we usually have of the legal limits of gambling would be a useful basis.

It is easy to condemn gambling in a sweeping way, but when

the opportunity comes people easily fall into it. Something more than a sweeping condemnation is required, more understanding of the moral and spiritual principles involved.

I feel the importance of the subject, but cannot claim that we are fulfilling the duty more effectively than others.

Letter No. 43:

We have a course in the curriculum of our Theological Seminary in Christian Sociology. In this course we also discuss Crime and Gambling. Each student writes a theme in this course, and some of them have written on the above-named theme. I might also mention that we had an interesting discussion on this subject, after receiving your letter, in one of the Seminary periods.

Letter No. 44:

Replying to your letter of January 3, permit me to say that I do not know how to advise you in regard to the treatment of the subject of gambling and crime, particularly in relation to the duty of the church in regard to the matter.

There are two extreme positions which I can imagine, and my own tendency would be toward an intermediate position. By this I mean a treatment of the subject which would not too severely indict the church, as much as it may need indictment, but one by which we can challenge the church in relation to this responsibility.

Seeking to reply to the interrogations of the last paragraph of your letter, permit me to say further:

1. The church at large is too indifferent to the subject of gambling and crime, condoning too largely the former in some less offensive forms.

2. My own church, the Mennonite Brethren in Christ, draws a more distinct line between the practices of the world and those of the Christian than the church does generally.

3. My own attitude is that of definite opposition to gambling in all forms, and, of course, uncompromisingly against crime.

Addendum

Letter No. 45:

In this institution, and in such other seminaries as I know, the subject of gambling is briefly considered in courses on Christian Ethics. I do not need to tell you that there is a controversy of long standing among the doctors as to gambling. The Rigorists consider it wrong *per se* but others do not condemn it as such, and deal with it in less absolute fashion. We have in our library a good many discussions, both Protestant and Catholic, of the problem.

To me the most serious part of the problem is speculation on the exchanges, and here there is need of much more attention than, so far as I know, is given the problem in theological education. While one finds in the Roman Catholic books a discussion of speculation, very little attention, so far as I know, is paid to it outside the moral theology of Catholicism. I do not think that the Protestant seminaries deny the ethical element in the problem of speculation, but I know of no seminary where the matter is taken up at any length. In the prescribed course on Christian Ethics in this institution it is very briefly discussed.

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In the Episcopal Church as I know it the rigorous attitude toward gambling is rarely found. In our upper-class constituency I see very little realization of the ethical objections to speculation or gambling in general. I think it would do the Church good to have the problem quite forcibly presented to it.

Letter No. 46:

Personally, I feel deeply concerned about the apparent growth in gambling and in governmental endorsement of it. I believe that the hunger for thrills, regardless of cost, and the delusory hope of getting something out of someone else for nothing, have serious demoralizing effects.

But the idealistic energies of the church are at present occupied with still greater issues. The menace of possible future wars, and the inefficiencies and wrongs of greed-dominated industry and commerce, occupy the forefront of the social consciousness of the

church. This seems to me to be desirable. I do not favor prohibitory crusades against gambling and similar evils.

As I see it, the great need is to kindle and enflame the vision of the people for values higher than the material and selfish ends typified by gambling. The function of religious leaders should be positive rather than negative.

Letter No. 47:

The Dean has asked me to answer your letter on gambling. Gambling comes up in Moral Theology under Contracts. Any Moral Theology, *e.g.* Slater, Koch-Preuss, McHugh & Callen, Hall & Hallock, will serve. Also Hastings, *Encyc. of Religion,* s. v. Gambling; *Catholic Encyc.,* s. v. Gambling; Rowntree, *Betting and Gambling;* Mackenzie, *Ethics of Gambling;* Drake, *Problems of Conduct;* Kirk, *Conscience and Its Problems,* 306-319. The last represents where at least many of us stand.

We get our sociology from the New School of Social Research. I do not know what they may have to say about gambling. They are at 66 West 12th Street, New York City.

Letter No. 48:

Your letter of January third is at hand and carefully considered. In the theological seminary the subject of gambling is considered in the study of Christian Ethics where its place is normal. I may say that it is considered then by all of our theological schools. Such books as Garvie's *The Christian Ideal for Human Society,* Green's *The Problem of Right Conduct,* Dr. Cabot's *The Meaning of Right and Wrong,* Smith's *The Principles of Christian Living* and others give good discussions from the several points of view social, religious, psychological, etc.

Now I do not know that the Church has any different method of discussing or handling the subject of gambling than that which is suggested by this ethical study. I am sure that the Church itself should give up its bazaars and most of its money-making schemes, especially those which border on or suggest, even slightly, gambling. We teach our men not to allow such practices and to find

some better way. And, in social service agencies in the parish, to work against the very spirit of gambling and these agencies to be led by the clergyman himself. Of course he will speak against it. I do not know how else we can deal with the matter.

Letter No. 49:

I do not know that I can add much to what I published in 1924 (Hall & Hallock, *Moral Theology,* Longmans, Green & Co.); the subject is briefly treated as follows: "The practice is justified on the plea that when the stakes are moderate the loser is merely paying a price which he can afford, and which he is willing to run the risk of paying, for recreation. As thus defined and limited, gambling cannot be said to be intrinsically wrong. The difficulty is that the practice tends in a large majority of instances to pass beyond defensible limits both of time consumed and of resources put to risk. At best it is a morally dangerous pastime, contrary to Christian expediency. Personal pride, as well as the hope of a turn in the run of luck, prevents the loser from withdrawing when the amusement is becoming too costly, and the other party may be led both by ignorance and eagerness of victory to bring disaster—even ruin—upon him. The principle of stewardship requires that everyone shall protect his resources from unnecessary risk of loss so that he may use them wisely in fulfilment of his responsibilities under God. In brief, while not every form and degree of indulgence in gambling is sinful, the practice is usually unsafe and morally inexpedient;" (pp. 168-169). Some references are given in a lengthy footnote. The matter of speculation is not dealt with at length; it is regarded as gambling on a large scale, in which there is no real exchange of values, and, consequently, a matter to be unreservedly condemned from the moral standpoint.

This still represents my viewpoint, my teaching, and what I think should be the attitude of the Church generally.

Letter No. 50:

I am interested in your proposed book on *Gambling and Crime.* I am sorry to say that I do not know of any way I can put you

in touch with very much definite instruction here which will be of help to you.

Our Social Ethics work is done through the Sociology department of the Faculty of Arts and Sciences. The sort of problem you are interested in would be taken up by some one or another of the instructors there.

I suggest that you write to Professor Richard Cabot, 101 Brattle Street, Cambridge, asking him where you could best find the Harvard pronouncements on the matter. I seem to remember that Cabot himself has written something about gambling. Professor Cabot has retired from active service on the faculty, but knows all about the division of the subjects in the field, and could put you in touch with the person whom you wish.

There was also an interesting chapter on gambling which came out in a little book I picked up in Oxford last summer which was a set of essays on various phases of Christian Ethics. It was one of those composite volumes which they do so well in Oxford. You would be very likely to find that in the Library of the College of Preachers. Personally, I am afraid I can be of little dogmatic help to you. I have known some men whose lives were ruined by gambling, and in their instance can regard the practice as nothing short of tragedy. On the other hand, I have more or less quiet friends who play bridge for ten cents a hundred, and I do not know that I am prepared to bring down ecclesiastical condemnation on them.

Letter No. 51:

I regard gambling as not merely a legal but as an ethical problem and I shall be glad for anything that will help enlighten our minds and strengthen our resources as we seek to deal with it.

I have not seen your chapter, of course, and can express no judgment except in very general terms. I certainly would have no sympathy with the idea that it would be "more expedient to tone down the discussion so far as it relates to the duty of the church."

Addendum

Letter No. 52:

I can answer only on the basis of a limited acquaintance with courses in Christian and social ethics as offered in theological schools and on the basis of my familiarity with text-books used in these courses. It appears to me that this subject is generally treated only incidentally and that it is rarely made the subject of particular study or research. The prevailing attitude may be summarized in the words of the late Professor G. B. Smith of Chicago Divinity School: "The evil of the gambling appetite is too well recognized to merit specific condemnation." After all, the theological curriculum does not offer us an opportunity to deal intensively with each of the great moral problems. The intense interest developed in recent years first in the liquor problem, then in the race, political and economic as well as sex problems, has tended to relegate some other questions, such as this one, into the background. At the same time I think there is a definite tendency now to deal more specifically with a greater variety of moral questions. This tendency is apparent in England in theological education and is making gradual progress in the United States.

So far as the attitude of the church in general is concerned, I should like to point out that, with some exceptions, it has continuously borne witness against the moral evil of gambling. It has dealt with the subject, I believe, primarily with educational rather than with legal methods, though the latter have also been employed. Churches which continue to use the catechetical method of instruction—the Lutheran and, in part, the Presbyterian, for instance—generally deal with the subject under the head of the eighth commandment, "Thou shalt not steal." The Methodist Church has carried a clause on the condemnation of gambling in its discipline almost continuously. It is, of course, less possible to make a general statement about churches with a congregational form of government, but sermons and disciplinary cases in these groups indicate their outspoken opposition to gambling also. Further it will be found, I believe, that in promoting local and national or state legislation on the subject, churches, through their members, have taken an active part.

It is doubtless true that prior to the Civil War the American churches were more keenly aware of this evil than they have been in the later period. Furthermore, the development of stock and grain gambling has escaped the notice of those churches which remained pre-occupied with the familiar vices of the average citizen.

You will make an important contribution in making available specific materials on this subject and in analyzing the problem. I shall look forward to the appearance of your treatise.

Letter No. 53:

I have no doubt that each organized Protestant body has an official utterance on gambling. You will find the Methodist Church declaration in the *Discipline,* the latest edition being that of 1932 and which can be purchased from the Methodist Book Concern, at 150 Fifth Avenue, New York City, New York.

Letter No. 54:

The principles which guide an individual Christian leader or an individual Christian in dealing with such subjects as gambling and crime are thoroughly considered in our course in Christian Ethics and in certain other courses in our regular curriculum. We do not attempt to give our men set rules of action, but we try to prepare them to develop courses of action on the basis of keen conscience, thorough study, and good common sense. I am sure that no man would come through our courses here feeling that gambling was a legal rather than an ethical problem, but that he would feel that it is ethical to the solution of which he would naturally bring legal help.

Letter No. 55:

In answer to your inquiry of December 21 will say that a book on *Gambling and Crime* would be welcome. I do not think you can speak too plainly on the subject. I agree with you that the church could be of great assistance in solving this problem, and I feel that it lies within its province to do so.

Yes, we have courses in ethics, social science, and practical theology. The question of the ministers' ethics comes up in all of these courses, not alone the ministers' ethics but the ethics of the church membership as well.

I am sure the seminaries regard the matter of gambling as an ethical problem. I cannot speak for the whole church. My own personal attitude is that it is an ethical question.

I will be interested in your book when it is off the press.

Letter No. 56:

I note with considerable interest of your forthcoming book on *Gambling and Crime*. I am very much interested in your subject and will look forward with anticipation to reading it when it comes off of the press.

In regard to the point as to whether you should be free to express your conviction on the apparent indifference of the church to gambling, I agree with you thoroughly as per your letter, and am therefore opposed to the view of your advisors. I believe that the church should become a virile, dynamic spiritual force in the world, a champion of right, truth, and social justice, and therefore should take an active part in all movements having to do with spiritual and moral matters. This would include gambling, and certain types of crime. I believe that the church has lost a part of its virility and should become a vital force in a community for righteousness, both personal and social. If the church is not doing its duty as a moral and spiritual leader, it should be the duty of men like yourself in writing and public addresses (when advisable) to point out its errors. Of course, not having read your manuscript I am not in a position to advise or suggest in a particular way, but the above is my general position on the subject.

Letter No. 57:

The Methodist Church has always condemned gambling in all its forms, from petty games to speculation in stocks. However, there is not any legislation in our Church which is designed to prevent either ministers or members from buying stocks for specu-

lative purposes or dealing in futures. The Methodist Church has always been rather on the side of those churches which opposed games of chance, even when no stake was involved and while condemnation of card playing and other games of chance has been released in recent years, there has been no disposition to condone gambling.

Both of the large Methodist churches in this country have been quite active in preparing the social creed of the Federal Council of Churches ever since this Council was organized, and since this creed takes the position that business be carried on for the public good, the Methodist Church could not sanction buying futures on margin or even buying stocks in a speculative way.

The social creed of the Federal Council of Churches was placed in the Book of Discipline of the Methodist Episcopal Church, South, by the General Conference in 1914 and has been reenacted by every General Conference since that time.

Letter No. 58:

My stand in the course in Applied Christian Ethics is that gambling is a distinctly ethical issue. I have no time to go into a detailed statement, but can say that I am convinced it is one of the subtlest and gravest forms of moral evil that we have in our day. If you are under the impression that the Church at large is indifferent toward the evil of gambling (and on that, for all I know, you may be, at least in part, correct), I must say that the Christian Reformed Church, at whose Seminary I am teaching Ethics, does not hold such a view.

This stand on the specific issue of gambling has not come to any definite expression in the form of synodical resolutions, but I know that public opinion is very definite on this question and would speak unequivocally if a case of appeal should arise. You may be interested to know that our Synod has spoken on questions of amusement in the past and has unmistakably condemned card playing as a form of gambling when the game is played for a stake.

Of course, the question of gambling in connection with the stock market and playing on the margin is a delicate ethical prob-

lem. I mean to say that it is often very difficult in the complexities of modern business life to distinguish between legitimate and illegitimate speculation. But though it may be hard to draw the line, there can be no doubt about the common forms of gambling in our day being of the variety that is far beyond the line of demarcation between legitimate investment and gambling.

I am looking forward to your book on the subject with some interest and hope to hear of its appearance at some future time.

N.B. An index of names covering the above replies may be had by addressing the author, at Webster Hotel, 2150 Lincoln Park West, Chicago, Illinois, if stamped, addressed envelope is enclosed.

GLOSSARY

Arbitration award: A decision of arbitrators chosen by the parties to the controversy.

Ballooning a stock: Working the price of a stock to fictitious heights by spreading rumors and manipulating sales.

Bear: A trader who believes the price of stocks will decline, tries to cause them to decline, and sells.

Bear pool: A pool organized to manipulate certain stocks to lower prices.

Bet: That which is laid, staked, or pledged, as between two parties, upon the event of a contest or any contingent issue; the act of giving such pledge; a wager.

Big board: The New York Stock Exchange.

Big house: A Federal or State Penitentiary.

Big shot: An important individual; a high official.

Blind pool: A pool organization in which the members have no voice in management, the manager being given full authority to operate as he sees fit.

Bob-tailed pool: A small pool organized for making a quick turn.

Boiler shop: An office for the sale of fake securities or stocks.

Bonds: Instruments made by a government or a corporation as an evidence of debt, usually for the purpose of borrowing money; hence, loosely, interest-bearing certificates issued by a government or a corporation, especially when a date is set for the payment of the principal.

Bona fide: In good faith—a test of the legality of a transaction.

Bookie: A bookmaker.

Bookmaker: One who makes a book of (books) bets, especially on horse-races.

Borrowed stock: The stock of someone else which a short seller "sells" when he has no stock of his own to sell and which he undertakes subsequently to replace by means of a "covering" purchase at a time when (he hopes) the price has declined, i.e., replacing "borrowed" stock with cheaper stock.

Bribe: An undue reward for anything against justice.

Broker: A dealer in money, notes, bills of exchange, etc.; often with a qualifier, as *bill* broker, *exchange* broker, *stock* broker.

Brokers' loans: Loans to brokers on security collateral; either call loans or time loans.

Bucketshop: A broker's office where the "house" takes the side opposite that taken by the customer; an office or place where facilities are given for making bets in the form of orders or options based on current exchange prices of stocks, grain, etc., but without any actual buying or selling of the property, stocks, grain, etc.

Bull: An investor or trader who believes the prices of stocks will advance, tries to cause them to advance, and buys.

Bull market: A market whose major trend is upward.

Bull pool: An organization of traders or investors for putting the price of a given stock up. The aim is to put the market up by buying and, when the public comes in, to sell out at a profit.

Buyers' options: Options are taken on a given stock for from four days to sixty days. In buyers' options the buyer has the right to call for the stock on which he has an option at any time within the life of the option.

Call loans: Loans to brokers subject to termination at the will of either the borrower or lender.

Capital stock: The capital of a corporation in the form of transferable shares, each of a certain amount.

Cats and dogs: Worthless stocks; wildcat stock.

Certificate of stock: Written evidence that the holder is entitled to a share in the capital stock of a corporation.

Chance: Something that befalls as the result of unknown or unconsidered forces.

Chiseler: One who lives by his wits.

Client: A victim of a confidence game.

Commodity: Used as a corresponding singular of the word *goods;* an economic good.

Consideration: That which, in law, is regarded as the equivalent or return given or suffered by one for the act or promise of another; recompense, compensation.

Covetousness: Excessive eagerness to obtain and possess (especially money); avarice, cupidity, greed.

Crime: An act or omission forbidden by law and punishable on conviction.

Dummy director: One who plays a merely nominal part in the management of a corporation.

Dynamiter: A high-pressure salesman.

Futures: Things pretended to be bought and sold, for "delivery" at a future time.

Flyer: An operation that varies from semi-gambling to mere gambling in stocks. A stock is "bought" or "sold" on a chance that it will advance or decline and a quick turn with good profits can be made.

Gambling: Betting or wagering, by agreement between two or more persons, whereby the money, property or other thing of value of one or more of the parties to the agreement becomes the property of the other party or parties to the agreement, without consideration, upon the happening of an uncertain, future event designated for that purpose.

Gaming: The act or practice of playing games. Gaming for stakes or wagers is gambling.

Graft: Illegitimate or improper profit, a sort of excrescence on a legitimate business undertaking; acquisition of money, position, etc., by dishonest or unjust means.

Hedge: To reduce the risk of a wager by making a bet against the side or chance one has bet on (in order to insure against loss).

Invest: To lay out (money or capital) in business with the view of obtaining an income or profit; to convert into some form of wealth other than money, usually of a more or less permanent form and as a means of obtaining income or profit; as to invest in bank stock or government bonds.

Insiders: Interests that have inside information as to what is happening or is going to happen in the affairs of a corporation.

Lambs: The public that buys the stock when traders and investors are selling out their holdings.

Lottery: A scheme for distributing prizes by chance or lot where a valuable consideration is given for the chance of drawing a prize, especially where such chances are allotted by sale of tickets.

Luck: That which happens to one seemingly by chance; an event, good or ill, affecting one's interests or happiness, and which is deemed casual.

Manipulation: A planned creation of an artificial price on either the long or short side of the market.

Margin: The amount of money deposited with a broker by a "purchaser" or "seller" of stock or commodity to guarantee the broker against loss by reason of changes in the price.

Mercenary crime: A crime committed in the hope of acquiring pecuniary reward or profit therefrom; crime for profit.

Numbers gambling: A form of lottery which pays on number combinations taken from published records of bank clearings, the United States Treasury balance, horse-races, etc.

Playing the market: Betting in the forms of trade on the rise or fall of the market price of stocks or commodities.

Pari-mutuel system: A form of betting on horses in which those who bet on the winning horse share the total stakes less a small per cent to the management.

Pegging the market: Maintaining the price of a stock at or near the same figure; e.g., the price of a certain stock is maintained at 43 by a group of bankers who buy when the price goes below 43 and sell when it goes above 43.

Price differences: A basis of determining a wager or bet on the fall or rise of market prices of stocks or commodities between the time of making the wager or bet and the time of settlement.

Privileges: Contracts sold by a maker which give the buyer the right, under specified conditions, to call upon the maker for delivery of stock, or to deliver stock to him.

Public: The great mass of the people who "buy" or "sell" stocks occasionally. The public is said to be always wrong, and usually is wrong. That is, the public "buys" on a rising market and "sells" on a declining market, while the "insiders" are doing the opposite.

Puts and calls: Contracts whereby the maker agrees to receive or to deliver from or to the purchaser of the privilege a certain amount of stocks, grain, etc., at a fixed price, at or within a certain time, at the option of the purchaser of the privilege of "putting" or "calling" the stocks, grains, etc.

Racket: A scheme for gaining money or property by crooked, illegal or criminal practices.

Raffle: A kind of lottery in which a number of persons pay, in shares, the value or assumed value of something put up as a stake, and then determine by chance (as by casting dice or drawing lots) which one of them shall become the sole possessor.

Rigged market: A market artificially prepared for some event as to market prices.

Risk: The pay of soldiers; hence, perhaps, fortune, good or bad; hazard, danger, peril; exposure to loss, injury, disadvantage or destruction.

Run-in the shorts: The bulls force the shorts, by advancing the price, to buy stocks to cover their short sales.

Running to cover: The shorts hurrying to buy stock to cover their short sales.

Securities: Evidences of debt issued by a government or by a corporation; a bond. Corporate stocks are not securities.

Sellers' options: Contracts lasting from four to sixty days whereby a seller has the right to deliver stocks to the buyer at a specified price at any time during the life of the option. (Cf. Puts and calls.)

Share of stock: A right which the owner has in the management, profits and ultimate assets of a corporation.

Selling short: Selling "borrowed" stock which the short seller expects to replace with cheaper stock when the price declines.

Speculate: To enter into a business transaction or venture from which the profits or returns are conjectural because the undertaking is out of the ordinary course of business; to purchase with the expectation of profiting by anticipated, but conjectural, fluctuations in price; often, in a somewhat depreciative sense, to engage in hazardous business transactions for the chance of an unusually large profit; as, to speculate in coffee, in sugar, or in bank stock.

Specvestment: The purchase of a stock that is reasonably sound with speculative features.

Spread: The margin between bid and asked price. The term is also applied to a form of privilege which combines a put and call issued on the basis of "points away" from the market. A spread is similar to a straddle except that a straddle is issued "at the market."

Stake: That which is laid, or pledged, as between two or more parties, upon the result of a contest or any contingent issue.

Stock: The capital of a corporation in the form of transferable shares, each of a certain amount.

Straddle: A form of privilege which combines a put and call and is similar to a spread except that the straddle is on an "at the market" basis while a spread is on a "points away" basis.

Stretch: A term of years in prison.

Strong hands: Stock is transferred from weak hands to strong hands when the public sells to insiders or to large financial groups who are accumulating stock.

Sucker list: A list of names of persons who may be easily persuaded to buy worthless stock.

Sucker pool: A pool which has admitted a lot of small brokers and traders, hoping to sell out to them.

Swindle: To cheat or to defraud.

Taking profits: A bull takes profits by selling after an advance in price; a bear, by buying after a decline.

Ticker: An instrument found in brokers' offices in many cities which records stock market quotations on the "tape" by means of symbols.

Ticker tape: A narrow ribbon of paper upon which stock-market quotations are printed by a ticker.

Tip: Supposed advance information.

Tipster sheet: A publication purporting to give advance information about stocks.

Totalizator: A machine for registering and indicating the number and nature of bets made on horse races, used in the pari-mutuel system of betting.

Unloading on the public: Individuals or pools that have been carrying large amounts of stock are said to unload on the public when they sell them in the market.

Wager: That which is risked, as between two or more parties, on an uncertain event.

Wall Street: The term has, in the world at large, several meanings. In a restricted sense it means the New York Stock Exchange and the brokers who are members of it. In a broader sense it means those financial institutions—banks and investment houses as well as brokers—which center about that famous street, and whose activities are so often reflected by the Stock Exchange itself. In a still broader sense it includes all Stock Exchanges, stock brokers and brokers' correspondents, wherever they have their offices.

Wash sales: The means of creating an artificial price for a particular stock when brokers agree among themselves, by means of buying and selling transactions, to maintain that price. The transactions are purely fictitious, the seller never expecting to hold the buyer for payment, nor the buyer expecting to receive any stock.

Welsher: One who gets his broker to trust him and then lets him take a loss.

When, as and if issued stock: When it is rumored that new stock is to be issued by a corporation, brokers on the Curb Market begin to trade in it on a "when, as and if issued" basis. If the rumor should be false, the contracts are void; if true, then the shares sold will be delivered when issued.

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